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ABSTRACT

This study explores the degree to which the delivery of elementary and secondary instruction through the use of telecommunications is constrained by federal and state law, and examines the nature of the constraints and their implications for the present and future use of telecommunications-based delivery instruction to students within the age of compulsory education. The state and federal roles in the control and financing of elementary and secondary education are outlined, and state regulation of precollegiate education is discussed with particular regard to regulation of finance, institutional approval, and the concept of attendance. Issues are identified which concern the potential conflict between state control of education and federal preemption of most aspects of telecommunication. The effects of regulatory constraints on the uses of telecommunications-based instruction on the provision of postsecondary education are also discussed as an indication of what may be faced by the primary and secondary education sector. Conclusions and six tables are included. (LMM)

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ISSUES OF LAW AND POLICY AFFECTING TELECOMMUNICATIONS-BASED DISTANCE LEARNING

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EDUCATIONAL DEVELOPMENT LABORATORY

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ISSUES OF LAW AND POLICY AFFECTING TELECOMMUNICATIONS-BASED DISTANCE LEARNING

by

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MARCH 1984

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Introduction

The purpose of this study is to explore the degree to which the delivery of elementary and secondary instruction through the use of telecommunications is constrained by federal and state law. The implications of such constraints, to the extent they are found to exist, are significant: where the choice of an instructional delivery system is based on factors other than what best serves the needs of the learner population, the development and utilization of that system is likely to be distorted. This study seeks to examine the nature of the constraints and their implications on the present and future use of telecommunications-based delivery of pre-collegiate instruction.

One important aspect of this analysis lies in the fact that legal constraints are often considered by those charged with the development of new instructional systems only when they are prepared to put the system into effect. As it serves little purpose to devote energy and resources to the design and development of an instructional system which the legal and regulatory framework will not support, this study is intended to provide those who are developing new approaches to the delivery of K-12 instruction with an understanding of both the limitations and opportunities imposed or created by action of law.

Scope of Study

The universe to be examined is primary and secondary education delivered to learners within the age of compulsory education through the use of telecommunications-based distance learning mechanisms. The study does not

encompass the uses, and the limitations upon those uses, of instructional technology to meet the needs of adult learners, even where the level of instruction is pre-collegiate. (While the importance of adult learning cannot be overstated, the regulatory framework is significantly different from that affecting students of compulsory attendance age.) Also excluded is a vocational or recreational instruction.

A. The State Role

Historically, the supervision, control and financing of elementary and secondary education have been matters for the states and their subdivisions. It is state law under which systems of free public education were established and maintained; it is state law that sets standards for the operation of schools, both public and private; it is state law that provides for the qualification of teachers; and it is state law that creates the framework for the financing of public education at the pre-collegiate level. It is at the state or substate (local school district) level that decisions are made as to curriculum, teaching methods and duration of instruction. It is the states which decide how tax revenues are to be distributed to the schools, what programs are to be supported and what instructional technologies advanced.

While decisionmaking authority for many of these issues has been delegated to the professionals who run state education departments and local school districts, nonetheless under our legal system, ultimate discretion lies with the lawmakers whose actions establish the framework around which the schools must function. In this study we will examine how this legal framework affects the utilization of telecommunications technology for the delivery of instructional and other educational services.

Of particular interest is the degree to which state law constrains the degree to which telecommunications-based instruction can be equated with traditional pedagogies, particularly with respect to the administration and support of such programs.

One area of the law that is very much in flux concerns the degree to which the states can regulate the delivery of educational services that cross state lines through the vehicle of electronic technology. This study will examine the implications of the emerging ability to project instructional services throughout the nation without the necessity of physical presence in a given jurisdiction.

B. The Federal Role

While the control and financing of elementary and secondary education has been primarily a matter of state and local concern, the increasing involvement of the federal government in this area cannot be ignored. Federal programs carry with them standards of eligibility that bear on the nature of the instructional systems, and the manner through which instruction is provided. Equally important are federal laws governing the provision of educational services to special populations, notably the handicapped and those historically un- or underserved. While these statutes may on the one hand encourage the use of telecommunications-based instruction to serve those populations, their funding formulae may exacerbate differences between traditional and telecommunications-based instruction, or otherwise discriminate against technological systems. The federal role in telecommunications is also very different from that which it exercises in education. In the latter, the federal role is supportive, with much statutory language and even some Constitutional support for the premise that

education is primarily a state and local function. In the case of telecommunications, exactly the opposite situation exists: Since the dawn of radio, the federal government has asserted a superior right to regulate much of the nation's telecommunications activity, basing that power on the Commerce Clause of the Constitution. The federal regulatory scheme is pervasive, affecting the use of telecommunications for educational puposes in a number of ways. The study therefore explores how federal control is likely to affect telecommunications-based distance learning, particularly in the context of the present movement to deregulate telecommunications.

Definitions

One of the problems that has bedeviled the instructional telecommunications field has been a lack of clear definition of the concepts and terms that are so easily bandied about. It is not uncommon for a debate to rage over a particular aspect of telecommunications-based learning, only to find that the differences are only semantic. To avoid, or at least minimize, that problem, the following set of definitions are used throughout this paper.

A. Distance Learning

The term "distance learning" is defined for the purposes of this study as recognized learning that takes place at a site remote from the point of origination. ("Recognized learning" is here defined as instruction that meets the requirements of state compulsory education laws.) Distance learning may be delivered to individuals or to groups of individuals, at a site other than a school or in a school other than that where the instruction originates. Distance learning may constitute the entirety

of an instructional program or it may be one component of an education program that includes traditional classroom instruction, community-based learning centers or the use of visiting educational personnel. Distance learning may encompass the provision of instruction, counseling or the evaluation of performance (testing), a combination of any two, or all three. The key element is that the point of origination of the instruction or other educational service is remote from the location where it is received by the students. Whether the receiving site is a school building, some other public or private facility, or an individual home does not determine whether "distance learning" is involved. However, as is discussed below, these elements may significantly affect the legal consequences that attach to the services.

B. Telecommunications-Based Learning

This term is defined as instruction that is delivered to the learner through the use of an electronic medium. This includes open broadcast radio and television, cable, microwave and satellite systems, Instructional Television Fixed Service (ITFS), radio or television subcarriers (SCA services, Teletext), distribution of video or audio tapes or discs, telephone networks, and computer-assisted instruction. The delivery system may be passive (that is, comparable to the use of a text book), as is the case of broadcast television, or it may be interactive, as in the case of on-line computer systems or teleconferencing. The interaction may be between the learner and an instructor; among several learners, with or without the involvement of an instructor; or between the learner and the system itself, without immediate faculty intervention.

Frequently, a telecommunications-based instructional system will rely on a combination of two or more technologies. For example, it is common to combine what is called narrowcast television such as an ITFS or cable system with an audio teleconferencing capacity to provide an interactive capability. Another example would be the combination of videodisc technology with microcomputers to create an interactive learning system that takes advantage of the special attributes of each technology and overcomes their respective limitations (such as the relatively poor quality of visual images generated by a microcomputer).

It is particularly important to recognize that there are few fields of human endeavor where technology is evolving more rapidly than in the area of telecommunications. Therefore, notwithstanding the above descriptions, this study examines telecommunications-based distance learning in its most generic form, with the understanding that the advanced technologies of today may be superseded in short order by other approaches not within our present contemplation. For example, few could have foreseen the explosive growth of microcomputers, the widespread availability of home videotape recorders or the pervasiveness of cable television systems until those technologies were actually exploited. It is equally important to avoid overstating the potential of a particular technology: In the 1940s television was expected to revolutionize education and ultimately render the schoolroom obsolete.

The Nature of the Constraints

The use of telecommunications systems to deliver distance learning may be constrained in several ways. First, distance learning itself may be

regulated, independent of the medium of instruction. Second, while the provision of instruction remote from the schoolroom or point of origin may be permitted within the scope of the governing law, the use of particular delivery technologies may be circumscribed. Often, this is not the result of an affirmative desire to limit the use of technology for the delivery of instruction, but simply reflective of the fact that a statute or regulation was promulgated long before the existence of the technology: Obviously, a compulsory education law adopted at the turn of the century could not have contemplated the ability to deliver sophisticated interactive instruction into the learner's home through the use of cable systems and microcomputers.[1] Similarly, the utilization of telecommunications technology may be constrained for reasons entirely independent of the instructional use, as where Federal policy results in the transfer of spectrum space away from instructional users.

Regulation of Pre-Collegiate Education

Elementary and secondary education is the most regulated component of American education. The Reserved powers clause of the Constitution has historically been construed to place responsibility for the control and provision of education in the hands of the states and their political subdivisions, and federal laws affecting education are virtually uniform in their recitation of the obligatory prohibition against "federal control of

[1] For example, the First Codification in New York was the Education Law of 1910, Section 620 et. seq.; often, such laws are derived from the state constitution, see Va. Const., Art. VIII,§1 et. seq.

education."[2] More significantly, the Department of Education Organization Act, which created the Cabinet-level department, unambiguously states that "primary public responsibility for education is reserved respectively to the states and the local school systems and other instrumentalities of the states.[3]

But if the federal government has accepted the premise (if not always the practice) of removing itself from the immediate operational aspects of education, the states have historically been squarely in the midst of it. There is not a state whose Constitution does not mandate the provision of educational services as a primary responsibility of its government, although their delivery is customarily delegated to a substate level, usually local education agencies coterminus with cities, towns and countries.[4] State laws affecting education fall into three categories: those that authorize the creation, operation and financing of public education systems; those that mandate attendance at an approved school for all children through a specific age (or graduation from high school, whichever occurs first), and those that establish standards for the delivery of educational services, whether public or private.[5]

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[2] See, for example, General Education Provision Act, §432, 20 U.S.C. 1232a.

[3] §101(4). See also Section 103 regarding federal-state relationships. 20 U.S.C. 3403.

[4] See Table A for a compendium of statutory references to state laws for the mandated provision of educational services.

[5] Often such standards are promulgated by administrative action authorized by more general legislation. See, for example, Va. Code §22.1-16 (1980).

A. Regulation of Finance

The most obvious state function with regard to elementary and secondary education lies in the financing of local public schools. This in turn implies the enactment of standards to determine whether a particular system or institution is eligible to receive such support, and in what amounts. A significant constraint on the use of telecommunications-based distance learning is therefore the degree to which the costs of such efforts are eligible for public financing. But most state funding formulae are driven not by direct cost but by the number of students in attendance. These attendance driven formulae, some of which are so sensitive that payments reflect short-term absentee rates, have created funding problems when applied to such relatively mild innovations as cooperative education and experimental learning programs. It is easy to see how, when one seeks to apply these same financing formulae to telecommunications-based distance learning, the problems can become substantial. The difficulty may readily be seen in the issue of measuring attendance: Some systems allocate state funds on the basis of daily institutional attendance reports. To accomplish this end when the instructional vehicle is a television signal and the students are ensconced in their homes or at another district poses an altogether new set of logistic problems. Similarly, the issue of the relative cost of instruction is more complex in this arena. Despite common belief, telcommunications-based programs are not necessarily less costly to operate than their classroom-based counterparts, but they are decidedly

different in the composition of their cost elements.[6] Student-teacher ratios become irrelevant in the traditional sense, since a telecourse or program of computer-managed instruction can theoretically serve an infinite number of students. Similarly, while telecommunications-based programs require significant commitment of instructional staff to ensure an effective learning experience, the composition of that staff may be very different from the relatively simple measure of one teacher for a specified number of students. For example, the use of master teacher-prepared telecommunications-based courses may allow the use of aides or interns at remote sites without degrading the quality of the instruction.

So long as telecommunications-based instruction was viewed as adjunctive to the regular instructional program, it was funded as an add-on, rather than part of the base budget. However, with the advent of efficient telecommunications-based distance learning systems, the entire configuration of financing elementary and secondary education must be reexamined. The issue is not simply the ability to allocate funds where some or all of the students are receiving instruction outside of the classroom. Even where the students remain in school, the use of telecommunications can complicate the financing strategies. For example, a science program originating in a different school, or even in a different district or state, can be used to enrich the program at a local institution that may lack the resources and personnel to carry out so sophisticated a program. How the cost of that program is divided between the user district and the providers

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[6] This does not mean to imply that telecommunications-based instruction is not often cost-efficient as compared to other delivery systems; only that such is not automatically the case.

of the service will vary from state to state, and even within states from one district to another.

A variety of approaches have been utilized to respond to this problem. In some instances, the producing district receives a user fee from the recipient districts, analogous to the rental of other instructional materials. The fee is based either on a specific charge for the use of the programming or a per pupil fee. Alternatively, the cost is simply divided among the using districts (which usually includes the originating district), much as would the cost of operating a common athletic facility.

The problem becomes more complex when one factors in two further elements: Attendance-based funding and the involvement of a third-party intermediary. The former problem has already been alluded to: How should the state treat the participation of pupils in a telecommunications-based program, when the bases for the costs may be significantly different from those of traditional instruction? In most cases, students participating in telecommunications-based programming <u>in their schools</u> are treated on the same basis as those in traditional instruction. However, the allocation of costs for students who are receiving the instruction in learning centers other than the regular school, or in their homes, is considerably more difficult. To the extent this issue has been addressed at all, the most common solution is to treat students who are regularly enrolled in a traditional resident program <u>and</u> who participate in a home-based enrichment as though the entirety of the enrollment was through the school. Enrichment programs that are in the form of <u>additional</u> instructional time, rather than involving a release from the normal school day, tend to shift the incre-

mental costs away from the standard enrollment driven system to locally derived augmentation funds.

The second problem, that of financing the costs of a third-party intermediary, is more complex. (The term "third-party intermediary" is used to describe any entity which is involved in the provision of the telecommunications-based distance learning but is not a duly authorized elementary or secondary school.) Among the possibilities are radio and television stations, cable systems, independent producers of instructional materials, operators of computer networks, and even satellite distribution systems.) The easiest way to approach the policy issue of financing the third-party cost is to factor it into the aggregate cost of the "producing" school, and then treat it as discussed above. However, there may be instances where there is no institution in the role of producing school, in which case the user institutions must be able to finance the cost directly.

The fees charged by such third-party providers vary widely. Some treat the provision of telecommunications-based instruction in the samecontext as the sale of textbooks, which affords the schools a relatively simple route without serious policy implications.[7] Others treat the delivery as a service for which a use fee is charged. Usually this is in a per pupil basis, which most states permit to be included as a direct instructional cost.

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[7] This does, however, raise the questions of whether textbook selection requirements should also apply. For those states with centralized approval systems, the consequences of applying this standard are significant.

The problem becomes more complex where the children are making use of the service in a setting outside of the classroom. The question then arises as to the extent to which the public body, be it the local school district or the state, can properly finance the cost of the telecommunications-based service. The problem is less severe where the pupils are enrolled in a program that is adjunctive to their regular enrollment, as in the case of a telecommunications-based program to enrich science education. Where the telecommunications instruction constitutes the entirety of the instructional program, the question then arises as to how the local district or the state can, under existing statutory authority, finance the instructional cost.

Where the service is provided under the aegis of the local public schools, or through the authority of the state to provide educational services to special populations, the issue of financing, although complex, can usually be construed within existing policies. For example, under the rubric of the mandated requirement to provide special education services for the handicapped, a district or state could find a telecommunications-based direct-to-home instructional service in the same manner it could finance other modes of providing education to the child. However, where the service is used an an alternative to public education, an entirely different set of issues arise. Only eight states permit public financing of private education, and in most of those cases the statutory authority is very limited.[8]

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[8] See Table B for references to state statutes permitting direct aid to private institutions.

It is possible, however, for the state to fund a telecommunications-based system that is available to public and private students alike, as a form of general educational enrichment. There would then be no per pupil cost: Rather, the service would be comparable to the state (or locality), providing access to a library or museum as an extension of the educational enterprise. Indeed, the solution to many of the financing questions surrounding the use of telecommunications-based learning often depends in large measure on how the issue is described. This in turn suggests that before seeking answers in this field, it is best to very carefully examine the question.

Thus, while the formulae for the financing of elementary and secondary education may indeed constitute a constraint on the use of telecommunications-based distance learning, experience demonstrates that in many cases apparent limitations and restrictions can be overcome. What is needed is a willingness to view the telecommunications-based instruction as an analogue to traditional modes, rather than as representing a totally new formulation.

B. Institutional Approval

Similarly difficult questions surround the approval of the instrumentalities that would provide telecommunications-based distance learning services, as well as the content of the institution itself. Traditional instruction, provided in classrooms by a teaching staff, does not conceptually vary in very great measure from institution to institution. While the quality of the teaching and of the facilities may of course differ significantly, there are common benchmarks and standards against which any given institution and its staff may be measured.

This is not necessarily the case for telecommunications-based distance learning. An entity that obtains a package of instructional programs and acquires through purchase or lease the means of disseminating it to a dispersed learner population may bear no resemblance whatsoever to a traditional educational institution. To attempt to apply existing standards for the approval of an elementary or secondary school to such a provider of educational services may be impossible.

In the same fashion, the content of the instruction is not as readily analyzed: the telecommunications-based instructional program is a unit that cannot necessarily be segmented into the typical textbook-lesson plan model. However, alternatives exist that allow the state to avoid curtailing such efforts. Obviously, the state can amend the standards for the approval of an educational institution or program to take into account the differences inherent in the provision of telecommunications-based distance learning services. Alternatively, it can require that such services be provided by or through the conduit of an approved structured school. While the former requires a fundamental rethinking of the definition of a school, a process that is both technically difficult and likely to stir deep feelings among a variety of affected constituencies, it is more likely to be responsive to the emerging field. The approval process need not become a constraint on the ability to utilize telecommunications technology in the dissemination of instructional services. The increasing use of output measures to determine program quality favors the development and utilization of telecommunications-based instruction. As compared to the relatively rigid <u>process</u> measures that sought to regulate the manner of instruction,

particularly the use of standard textbook adoption lists, the development of output-related standards tends to make the institutional approval process more open to the use of innovative technology. A return to the use of achievement-oriented testing to determine pupil progress is consistent with a movement away from evaluation of the detailed process of education. An increasing number of states are implementing comprehensive testing programs to ascertain educational achievement and determine pupil progress, while approximately a third of the states require competency testing for students enrolled in private schools or being taught through alternative mechanisms (such as home or correspondence instruction.)[9]

C. The Concept of Attendance

The use of telecommunications technology poses its most difficult legal problems in the context of what constitutes "attendance at an approved school," as that is defined under many state compulsory education statutes. As noted above, the laws of every state require that children up to a specified age (or until the statutory exceptions are met) attend school or receive an education (depending upon the particular statute).[10] Some statutes specify that children must attend "public schools," leaving to subsequent provisions the exceptions that provide for nonpublic education, [11] while others specifically allow attendance at public or privately run institutions.[12] In all cases, however, the inference is that the child enrolls in and attends a formally organized institution of primary or

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[9] See Table C for examples of testing requirements for students not enrolled in public schools.

[10] See Table A.

[11] e.g., Cal. Educ. Code §48200.

[12] e.g., Ark. Stat. Ann. §80-1502.

secondary education, subject to the particular statutory and regulatory framework of the state.

Notwithstanding the uniform distribution of compulsory education laws, nearly all of the states allow children to be educated outside of the framework of organized, authorized institutions under certain defined circumstances, usually under the rubric of "home instruction."[13] Although a very few states allow parents to educate their children at home upon a simple declaration that they intend to do so, in the vast majority of jurisdictions, a detailed set of requirements and procedures are in force to tightly constrain this practice. Often, "home instruction" laws require tutors, including parents if they wish to teach their own children, to be certified as qualified teachers and prescribe basic curricula and periodic standardized testing. While state laws regulating out-of-school, alternative education have frequently been challenged in the courts, most often as constituting an infringement on the right of parents to teach their children in accordance with their own religious beliefs, with very few exceptions the courts have uniformly upheld the state's interest in ensuring that all children below a certain age receive a minimum level of education as a valid exercise of the inherent power of the state to provide for the public welfare.[14]

The use of telecommunications-based distance learning to provide an out-of-school alternative poses interesting questions in the context of

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[13] In the few states where statutory authority is lacking, court decisions have created the right. See, for example, People v. Levisen, 404 Ill. 574, 90 N.E.2d ___ (1910).

[14] See Table D.

state compulsory education laws. The first issue is whether a child's participation in such a program falls within the context of attendance at an approved institution, or whether it must be construed as a form of home instruction. In answering this question, much hinges on the identity of the entity that is providing or sponsoring the distance learning program. If the telecommunications-based program is provided by the local school system, or under the auspices of or with the approval of it or the state education agency, it is reasonably well settled that the state would construe participation in such a program as constituting "attendance" at an approved instruction. But it is not required to do so: If the state mandates attendance at an approved school, the argument could be made that participating in a telecommunications-based program from the comfort of one's own home does not constitute such attendance, and therefore violates the state compulsory education law, even if the program is provided by a local school district. While in some states an exception is already made to this approach for children who are home- or institution-bound, at issue here is the degree to which the state education agency (and state law) can construe telecommunications-based learning as sufficiently similar to classroom instruction so as to afford it a legal equivalency.[15]

The situation changes when the provider of the educational services is not the state or a local school district within the state but rather a private entity (or a public body located in another state). If the provider is located within the jurisdiction, and if it has registered and been approved as a school, then the distinction between what such an institution

[15] See Table E.

may do in terms of the pedagogies it chooses and what may transpire at a public institution tends to be minimized. However, where the sponsoring entity is located beyond the political reach of the state or its subdivisions or where the sponsoring institution is not approved by the state, a different set of rules must apply. In most jurisdictions, absent the highly unusual case of a statute that actually contemplates telecommunications-based distance learning, the alternative is to treat the program as home or correspondence instruction.

Frequently, however, these rules are not at all well suited to telecommunications-based learning, particularly if the telecommunications component is the major part of the instructional program. How, for example, can a telecommunications-based program beamed in from a neighboring (or distant) state meet the requirement of the recipient state that the instructor be licensed or certified by the recipient state?[16] If the telecommunications-based learning is considered merely adjunctive to so-called "live" instruction provided by parents or tutors (depending upon the requirements of state law), then one can escape this problem by equating the telecommunications-based component with text books. But if all or a major part of the instruction is derived from the telecommunications-based activities, then the question arises as to whether those services need to be specifically certified -- and if so, by whom?

State statutes that set standards for elementary and secondary education can have considerable impact on the nature of telecommunications-based instruction, and the degree to which it may be utilized with a particular

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[16] This is a requirement in at least eleven states. See Table F.

jurisdiction. A state law which requires an institution to maintain a library of a particular size may have little or no relevance to a computer-based system that enables a student in his or her home to access library collections thousands of miles away. Likewise, statutes and regulations that set standards for the number of hours in the academic day, that establish maximum class size requirements or that provide for the certification of instructors are either irrelevant or impossible to enforce with regard to telecommunications-based distance learning systems. What, for example, is the "class size" of a telecourse? How does a computer program equate with having a certified teacher in the classroom? The net effect of the difficulty of applying state standards to telecommunications-based distance learning may well be to encourage the state to reconsider the entire regulatory structure rather than attempt to accommodate the delivery systems within the scope of the existing rules.

The Federal-State Conflict

A related and particularly difficult issue revolves around the potential conflict between state control of education and federal preemption of most aspects of telecommunications. The fact that telecommunications is under pervasive federal jurisdiction and education similarly under the control of the states creates a conflict between the two in the context of the regulation of telecommunications-based distance learning.

The question comes down to who has the power to regulate a telecommunications-based distance learning service that originates outside of the boundaries of a political jurisdiction? Can Iowa control instructional television signals that are streaming across its border from Illinois?

Legal issues of constitutional scope arise when a state attempts to regulate activities that may be considered "interstate commerce." The Commerce Clause of the United States Constitution reserves to the federal government the power to manage such affairs, and thus limits the authority of the states to adopt regulations that interfere with the uninhibited movement of goods and people across state lines.[17] Coupled with this clause is another important constitutional provision, the Supremacy Clause,[18] which provides that federal laws are the supreme law of the land, superseding all state laws. These two provisions give a clear precedence to federal laws, over those of the states, in regulating interstate commerce.

Two centuries of jurisprudence have considerably amplified upon the meaning of these two constitutional provisions. The courts have developed a three-tiered approach for analyzing challenged state laws under the Commerce Clause, under which federal regulation is sometimes deemed to be exclusive, sometimes state regulation is exclusive, and sometimes the federal and state governments may regulate concurrently. The authority for the federal government to regulate exclusively has arisen when there is a need for uniformity of practice among all the states, when a state is engaged in commerce with a foreign nation, and when an activity is exclusively in interstate commerce without intrastate aspects. State regulation

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17 "The Congress shall have the Power...To regulate Commerce with foreign Nations, and among the several states, and with the Indian tribes." U. S. Const. Art. I, §8, cl.3.

18 "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land..." U. S. Const. Art. VI, §2.

may be exclusive when the affected commerce is completely within a state, or when aspects of interstate commerce are so local or limited in character as to require individual state treatment. Federal and state governments may regulate concurrently when national uniformity is not essential and state regulation does not constitute an undue burden on interstate commerce, or when purely local facilities are regulated or protective welfare measures are needed that do not unduly burden interstate commerce.

In many areas of commerce, the federal government has not acted to regulate the commerce in any comprehensive manner. This lack of federal regulation does not mean, however, that states are free to enact their own measures without regard to federal concerns. On the contrary, such situations fall within the doctrine of negative implication, a principle which provides that even if Congress has not enacted legislation in a particular area, state regulation interfering with interstate commerce may still be invalidated. This doctrine has enjoyed a renewed vitality in the Supreme Court in recent years, with several cases holding that merely because Congress has not acted to regulate a certain area of interstate commerce, the states may still not be allowed to impose their own individual regulations. In one case, the courts specifically declared that even though the state statute was enacted for the express purpose of protecting consumers from fraud, confusion, and deception in the market place, nevertheless the discriminatory statute would have to be struck down because this was the

type of problem "that the national interest in the free flow of goods between the States demands be tolerated."[19]

The doctrine of negative implication arguably has the strongest force in developing areas of interstate commerce. In these areas, Congressional inaction is due not to a thoughtful withholding of legislation, but rather to the fact that the genre is still in its adolescent stages, so that the best means of regulation are not yet ascertainable. The offering of long distance learning via telecommunications is such an adolescent genre. Consequently, the limits on state and federal regulation in this area are very much undetermined.

There is no doubt, however, that such activity falls within the broad scope of the Commerce Clause. The Supreme Court has consistently refused to limit the term "commerce" to the buying and selling of commodities or purely commercial activities, but rather has made clear that the clause should have the broadest possible reach. The courts have consistently extended the breadth of the clause to elements of commerce that were not in existence when the Constitution was adopted (for example, telegraph transmissions, telephone conversations and the like) and it now extends to every species of communication and transmission of intelligence from one state to another, whether for commercial purpose or otherwise. It should be obvious that, in our highly technological and mobile society, the scope of this provision is nearly all-encompassing.

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19 Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 354 (1977).

Since education has traditionally been regarded as an intrastate activity, the states have generally exercised relatively unbridled sovereignty in its regulation. However, on some occasions in the past, educational activities have taken on interstate aspects. The courts' treatment of these activities indicates the likelihood that long distance learning via telecommunications will also be viewed by the courts as interstate commerce. Particularly, unreasonable regulations restricting the operation of correspondence schools operating across state lines have been repeatedly struck down. In the leading case of International Textbook Co. v. Pigg,[20] the Supreme Court specifically found that the interstate aspects of educational programs involved in that case (including forwarding books and papers to students, instructing students through the mail and employment of traveling agents to solicit and accept student applications) were interstate commerce and thus entitled to protection from undue regulation by the states. Lower court cases have recognized the states' right to regulate interstate aspects of private education, but have said that the states' exercise of such right is permissible only in cases where a need is compellingly apparent, for example, situations with a manifest present need affecting the health, safety and morals of the people, regulations that are not arbitrary, discriminatory or oppressive, and regulations based on adequate legislative standards.[21]

An illustrative case relating to permissible regulation of nontraditional educational modes is Nova University v. Board of Governors of the

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[20] 217 U.S. 91 (1910).

[21] See, e.g., State v. Williams, 253 N.C. 337, 117 S.E.2d 444 (1960).

University of North Carolina.[22] In that case, a Florida-based university instituted various nonresident postsecondary curricula designed to lead to degree conferral by the institution, ostensibly in Florida. North Carolina's statute placed restrictions on and required prior approval of the conferral of degrees within the state. When the Board sought to subject Nova University to the North Carolina statute, claiming the power to license all teaching designed to lead to degree conferrals, the school brought suit.

The state Supreme Court ruled that the statute did not give the Board the power to regulate and license the University's right to teach. In addition, the court discussed, but did not premise its decision upon Nova's claims of a restriction on free speech and other fundamental constitutional questions. (The University raised issues based on the Commerce Clause and the First Amendment to the Federal Constitution, the free speech clause, the law of the land clause, the anti-monopoly clause and the equal protection clause of the North Carolina constitution, as well as the unconstitutional delegation of legislative authority.) However, because the case was decided on the limited statutory grounds that the state agency was exercising authority greater than that authorized by statute, the court did not rule on the constitutional questions, leaving those to be determined in a later case. It should be noted that the statutes of some other states do regulate the mere teaching of courses by out-of-state institutions,[23] and

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22 305 N.C. 156, 287 S.E.2d 872 (1982).

23 See, e.g., Mass. Ann. Laws, Ch. 69, 31A; Minn. Stat. Ann., 136A.61-136A.71; Ark. Stat. Ann., 80-4905; Ga. Code Ann., 32-4801 to 32-4820.

undoubtedly cases based on these constitutional questions will be forthcoming.

Within the realm of telecommunications, there are wide variations in the degree of federal regulation, and therefore wide variations in the degree to which state regulation is preempted. In the area of broadcast telecommunications (over-the-air television and radio), there is virtually total federal preemption. The Communications Act of 1934, and its predecessors, has long regulated "all interstate and foreign communicationby wire or radio."[24] Federal law goes to details such as the specific hours that a licensee may operate, rules for political programming and the prohibition on certain commercial material.[25]

In the area of cable television, on the other hand, there is an evolving issue of preemption. Historically, cable systems have been primarily subject to local regulation in the form of franchise ordinances and contractual agreements between the operator and the municipality. With the exception of limited "must carry" rules mandating carriage of most local television signals, cable systems have operated outside of the scope of federal regulation. The Supreme Court has held that the Communications Act confers only a circumscribed range of power upon the FCC to regulate cable systems, limiting such jurisdiction to that "reasonably ancillary to the effective performance of the Commission's various responsibilities for the regulation of television broadcasting."[26]

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[24] 47 U.S.C. 152(a).

[25] See generally 47 C.F.R. Parts 0-199.

[26] United States v. Southwestern Cable Co., 392 U.S. 157, 178 (1968). See also F.C.C. v. Midwest Video Corp., 440 U.S. 689 (1979); United States v. Midwest Video Corp., 406 U.S. 649 (1972). The specific regulations enacted by the FCC pursuant to this authority are found at 47 C.F.R. Parts 76-78.

However, the Senate has recently passed a measure that dramatically changes the balance of power between local (and state) government and the federal government. That measure, S.66, the Cable Telecommunications Act of 1983, would expressly limit the power of state and local governments to control cable systems through restrictive laws and ordinances. Instead, most local control would be a function of the process of negotiating the franchise agreement. However, while the earliest versions of S.66 would have prescribed state and local requirements for dedication of channels for educational purposes, the measure passed by the Senate allows the imposition of such restrictions. S.66 does portend a shift of emphasis away from the historic pattern of local control towards a more uniform structure. As cable systems expand and interconnect, as well as become the entry port for a wide range of telecommunications services quite apart from the transmission of television programming, the probability of increased federal dominion will similarly rise. But that dominion is likely to be exercised in the form of negative preemption, precluding or limiting the state and local powers while not directly substituting federal regulation.

The Instructional Television Fixed Service (ITFS) represents an interesting case in point between the federal power to regulate telecommunications and the state interest. After a protracted debate, the FCC recently reallocated eight of the existing ITFS channels to commercial use, arguing that the 28 channels presently allocated for educational use were more than were needed to meet the demand.[27] Since many of the ITFS channels are

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[27] Report and Order and Further Notice of Proposed Rulemaking, FCC 83-243, adopted May 26, 1983.

licensed to state and local government entities, or to independent schools and colleges, the FCC action has the effect of reducing the potential instructional telecommunications capability of those entities. (The FCC action is not as draconian as it may at first appear: all existing licensees are grandfathered, even on the reallocated channels, and the remaining ITFS channels can be shared, on a fee for use basis, with commercial users, if the ITFS licensee so desires.) Thus, the state interest in having a telecommunications vehicle available to it can be diminished by an act of federal preemption.

Other communications technologies are subject to varying levels of regulation. Some of the technologies (for example, microwave links, common carriers and multi-point distribution system) are licensed and regulated by the FCC and in that sense are more akin to traditional broadcast technologies. Others (for example, satellite master antenna television systems and non-broadcast services offered by broadcast licensees on their auxiliary facilities) are similar to cable television, in that there is very little federal regulation. Consequently, the scope of preemption with regard to these newer technologies is inconsistent, such that the courts will likely rely on Commerce Clause principles and the First Amendment to determine whether state regulation is permissible in a particular case.

Counter balancing the commerce power of the federal government is the police power of the states. While the police power is not specifically mentioned in the federal Constitution, it has always been regarded as an

inherent power of the states as sovereign entities.[28] It is the power to prescribe, within the limits of state and federal constitutions, reasonable regulations necessary to preserve the public order and the health, safety and morals of the people. However, it is also established that a state may exert its police power only within its own territorial boundaries and may not regulate or proscribe activities conducted in another state by an organization located in that other state. The basic standard by which the validity of the exercise of a state's police power must be tested is one of reasonableness: the means adopted must be reasonably necessary and appropriate for the accomplishment of goals legitimately falling within the scope of the police power.[29] Although the standard is somewhat broad, it at least means that the mere assertion by a legislature that the statute relates to public health, safety or welfare does not in itself bring the statute within the police power; there must always be an obvious and real connection between the actual provision as a police regulation and its avowed purpose, and the regulation adopted must be reasonably designed to accomplish the end sought to be obtained. The particular means adopted by the state should not go beyond the necessities of the case, and should not be unduly oppressive.

The relation of the states' police power to the federal commerce power and other federal Constitutional provisions is certainly not clear cut. While it is established that rights secured or protected by the federal

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[28] The federal Constitution does, of course, reserve to the states all powers not explicitly delegated to the federal government. U.S. Const. Amend. X.

[29] See, e.g., Clason v. Indiana, 306 U.S. 439 (1939).

Constitution cannot be impaired by the states' police power, because the power must be exercised in subordination to provisions of the Constitution, the Supreme Court has also held that no provision of the federal Constitution was intended to take from the states the right properly to exercise their police power. The Supreme Court has specifically held, nonetheless, that the due process clause and the equal protection clause do place limitations on the exercise of a state's police power, and that any attempted exercise of the police power that results in denial of rights protected by either of those provisions is invalid. With regard to the First Amendment, a state may validly exercise its police power to infringe on the First Amendment when it seeks to punish those whose utterances are inimical to the public welfare, tend to corrupt public morals, incite to crime or disturb the public peace. This infringement is certainly limited, however, and the Supreme Court has said that a state may not unduly suppress free communication of views under the guise of preserving desirable conditions under the police power.

When an entity seeks to offer long distance learning via telecommunications, a state in which such communcations are received may seek to impose a number of restrictions on such programs purportedly in exercise of its police power. For example, a state may enact regulations to guard against fraud or to attempt to ensure the physical well-being of its residents. Whether such regulations are constitutional depends on the balancing of interests on the parts of the state, the federal government and the class of persons affected. To determine in each case whether the state's police regulation should be upheld, the Supreme Court has developed the following approach:

> Although the criteria for determining the validity of state statutes affecting interstate commerce have been variously stated, the general rule that emerges can be phrased as follows: Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.[30]

The emphasis is on the requirement of a legitimate local public interest, and not merely the protection of the state's economy or some other insufficient state interest.

The Supreme Court has also held that when a state regulation rooted in the police power is challenged as impermissibly restricting interstate commerce, the regulation may be sustained, not because it only affects commerce "indirectly" rather than "directly" or because it merely affects interstate activities while not controlling them, but, rather, the regulation should be upheld

> because upon a consideration of all the relevant facts and circumstances it appears that the matter is one which may appropriately be regulated in the interest of the safety, health and well-being of the local communities, and which, because of its local character and the practical difficulties involved, may never be adequately dealt with by Congress.[31]

It is important to note the implication of the last clause of this holding: when a matter could be adequately dealt with by federal regulation, that is a factor weighing in favor of invalidating the state regulation. The balance between state and federal power is therefore a delicate one, and in

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[30] Great Atl. & Pac. Tea Co. v. Cottrell, 424 U.S. 366, 371-72 (1976).

[31] Breard v. Alexandria, 341 U.S. 622, 635 n.19 (1951).

an area as ill-defined as long distance learning via telecommunications, likely to result in ambiguous and changeable judicial interpretations.

If an out-of-state postsecondary institution cannot be readily prevented from providing telecommunications-based instruction to residents of another state and awarding its own academic degree, to what extent can a state control the comparable delivery of elementary and secondary education? Certainly a child's parents may elect to enroll him or her in a school outside of their state of residence, just as a person may elect to attend any postsecondary institution he or she desires. But in the case of telecommunications-based distance learning delivered into the state, would the compulsory education law be complied with by enrollment in such a program? The statutes are understandably silent on this point, with the only useful analogy being the use of correspondence courses in lieu of attendance at an approved school. As discussed below, this analogy is not altogether satisfactory, either from the perspective of protecting the rights of the child or the interest of the state.

Likewise a state cannot impose barriers on the acceptability of an out-of-state diploma issued by a duly constituted (that is, authorized and accredited) institution, even if that approval is from another jurisdiction. (While the courts have held that a state may establish certain preferences for graduates of its secondary schools, particularly with regard to requirements for admission to some or all public postsecondary institutions, they have likewise held that a valid out-of-state or foreign credential cannot be used as a bar to admission or impose discriminatory standards solely because it is issued by an out-of-state or foreign institution, absent a showing of a substantive reason for the discrimination.)

The interjurisdictional problems of telecommunications-based distance learning extend to matters of financing as well as those of educational quality. Recalling that a telecommunications-based system need not respect district lines any more than state boundaries, it is altogether possible for one school district to in effect "raid" another by offering a television-or computer-based distance learning program to the residents of other districts even within the same state. If the state funding formula takes into account students enrolled by the district, then the offering district would receive additional revenues and the district where the student resides would receive less.

The converse problem arises with regard to local tax payments: The parents of the child enrolled in the distance learning program are paying taxes to a district in which their child is not enrolled. However, that is no different from the private education situation. Under these circumstances, assuming for the sake of argument that the telecommunications-based provider is also a public system, it is as though the state afforded the parents a tuition voucher which they could cash in on any appropriate district. The consequences of this sort of financial dislocation are impossible to assess without a sense for the potential extent of such cross-jurisdictional enrollments. As in the cases discussed above, state and local laws and regulations have not come to grips with the issue of the outside school coming to the student, instead of vice versa.

While these matters have not yet been addressed in any depth at the pre-collegiate level, they are presently under intensive examination as they impact on postsecondary education. Under the joint auspices of the

State Higher Education Executive Officers Association (SHEEO), the organization of state officials responsible for the oversight and coordination of postsecondary education, and the Council on Postsecondary Accreditation (COPA), the national umbrella organization for the voluntary postsecondary accreditation community, a comprehensive study is being conducted to determine how best to cope with the state authorization and voluntary accreditation issues posed by telecommuications-based distance learning. With the support of the Fund for the Improvement of Postsecondary Education, the project on the assessment of long-distance learning via telecommunications (ALLTEL) is looking at precisely the set of issues that are on the verge of sweeping over the precollegiate community. The ALLTEL project is examining the definition of "presence" in the context of a telecommunications-based program and the establishment of uniform accreditation and state agency practices for the approval of distance learning programs. The products of this project will bear heavily not only on rationalizing the utilization of telecommunications technologies to deliver postsecondary instruction to distant audiences but also on the exploitation of these technologies for comparable pre-collegiate education.

Federal Program Implications of Telecommunications-Based Distance Learning

The constraints imposed by Federal preemption of telecommunications, including the negative preemption exercised in such fields as cable television, ought not be considered the extent of federal involvement in this field. There are a number of federal programs that have an affirmative

effect on the utilization of telecommunications-based instruction. Perhaps most notable is the requirement of Section 503 of the Rehabilitation Act of 11973 which provides that:

> No otherwise qualified handicapped individual in the United States, *** shall, solely by reason of his handicap, be excluded from the participation in *** any program or activity receiving Federal financial assistance.[32]

While Section 504 only requires that handicapped pupils receive the same quality of education afforded other chidren, it clearly established the premise that a school or other entity receiving federal support must accommodate the needs of the handicapped student.

In a more substantive vein, the Education for All Handicapped Children Act of 1975, known as P.L. 94-142, continued a pattern established under the 1971 amendments to the Elementary and Secondary Education Act to provide affirmative federal support for programs that ensure the provision of educational services to handicapped students.[33] Entire treatises have been written on the application of section 504 and P.L. 94-142, and it is not the purpose of this study to restate them. However, it is important to consider the implications of this statutory framework, and the Constitutional precepts upon which they are founded, in considering the future of telecommunications-based distance learning.[34]

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[32] 29 U.S.C. §794.

[33] 20 U.S.C. §§1400 et. seq.

[34] For an excellent discussion of the issue, see, Citron, The Rights of Handicapped Students, Education Commission of the States, Denver, 1982.

The important consideration of both of these programs, as well as the Equal Protection standard found in both the federal and every state Constitution, is that they impose affirmative obligations upon public authorities and those who operate with federal support (such as many private institutions). Assuming that a school system has an obligation to extend equal educational benefits to handicapped students, in compliance with Section 504, and to meet the special needs of the handicapped under P.L. 94-142, then it is logical to look to the use of telecommunications-based distance learning to help meet these obligations.

It is clear that telecommunications-based instruction can be used to reach students who cannot by reason of handicap attend regular classes or even travel to their neighborhood school. It does not require any special enactment to accomplish this end: The public education statutes of every state afford the authorities the options of formulating an educational system that meets the needs of the population, including the handicapped.[35] The important consideration is that given the current state of telecommunications-based instruction, the <u>failure</u> of a state or local district to utilize this technology to extend the reach of its instructional system to meet the needs of its handicapped children might conceivably be construed as a violation of the statutory prescription and a denial of Equal Protection.[36]

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[35] See Table D.

[36] See Table E for an analysis of state equal protection requirements.

It is not only the handicapped child for whom federal law encourages the use of telecommunication-based instruction. The Civil Rights Act of 1964 places a blanket injunction on all governmental agencies to ensure that all federally assisted activities are equally accessible to persons of all races,[37] and Title IV of the Act provides for the affirmative desegregation of previously segregated public education facilities.[38] But providing access and providing equality of service are two very different things, and again it is here that telecommunications-based instruction has proven its value in extending the best educational services into schools where the financial resources or the student density is not sufficient to support such on-site instruction.

The use of telecommunications-based instruction to enhance the educational program in communities without the resources to do so on their own is an extremely valuable tool in achieving the equity demanded under the Constitution and the laws enacted to enforce its precepts. The "electronic magnet school" is a concept that is beginning to gain support, particularly in less densely populated areas where the financial burden of program enhancement may be more than either the locality or state can bear. Reaching out to students in their schools and in their homes with enrichment programs based on television, radio, cassettes, video discs and computer networking can provide the kinds of educational access that the law demands, within the financial limitations that the economy mandates.

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[37] 42 U.S.C. 2000c

[38] 42 U.S.C. 2000d

The same concepts can be applied to the training and upgrading of instructional personnel. Telecommunications-based programs have been supported under Title V of the Higher Education Act of 1965 (Education Professions Development)[39] to extend contemporary learning concepts and approaches to teachers and other instructional staff in areas remote from the point of instruction. This has the advantage of not only providing those being trained with the most current and sophisticated information, but it minimizes the time lost from classroom teaching arising out of their training, thus reducing the replacement cost to the local school. There is now ample precedent for the use of funds under this Title, as well as the training and enhancement titles of the Elementary and Secondary Education Act[40] and the Education Consolidation and Improvement Act[41] for telecommunications-based services for instructional personnel, as well as for the provision of direct services to the pupil population.

Finally, there does exist limited direct federal support for public telecommunications. The Corporation for Public Broadcasting serves as a conduit for federal funds to local public radio and television stations to support their operations, including the provision of educational services,[42] and the Public Telecommunications Facilities Program (PTFP) formerly known as the Educational Broadcasting Facilities Program[43] provides funding to "telecommunications entities," which can include local school

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39 20 U.S.C. 1119 et. seq.

40 20 U.S.C. 2702 et. seq.

41 20 U.S.C. 3801 et. seq., consolidating many of the programs originally separately authorized under ESEA, above.

42 Communications Act of 1934, as amended, Title III, Part IV, Subpart C, 47 U.S.C. 396.

43 do., Subparts A and B, 47 U.S.C. §§394, 395.

districts, to enable them to expand their capacity to provide services by means of electronic technology. Although PTFP has never been funded at a particularly substantial level, given the potential scope of its activities, the targeted use of the available resources has resulted ina number of important developments, including the expanded use of the ITFS spectrum and the development of interactive systems as an adjunct to broadcast-based delivery.[44]

The Postsecondary Experience

While both the provision and regulation of primary and secondary education is different in key respects from that of postsecondary education, it is useful to look at the effects of regulatory constraints on the uses of telecommunications-based instruction in the latter area as indicative of what may be faced in the former. The considerable experience with the use of telecommunications-based distance learning at the post-secondary level affords valuable insight into many of the issues that must be faced in K-12 programs.

While differences do exist between these two sectors, it is important not to ignore the similarities. For example, in all but a very few states, the delivery of postsecondary instruction is subject to state control in the form of institutional authorization. The standards that are set by the states to authorize the conduct of a postsecondary program and the award of

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[44] Funding for PTFP in fiscal year 1984 is $12-million, down from $15-million in fiscal 1983. Although no funding has been proposed for the next appropriations cycle, the program is expected to be continued by the Congress, although possibly on an even more reduced scale.

academic degrees may be no less specific than those promulgated under state law to regulate the conduct of a local education agency: Many state authorizing statutes empower the regulating board or agency to set standards for such elements as the size of the library, the nature of the physical plant and the faculty-student ratio, factors that are analogous to the regulations promulgated for the approval of public and private primary and secondary schools and programs.[45]

The problem is that when many of these regulations are applied to telecommunications-based learning, they are simply not applicable. What is the relevance of the physical facilities of a college campus when the student enrolled through a telecommunications-based program may never set foot upon it? Can faculty-student ratios designed for resident instruction be applied without modification to systems that rely on computers and telecourses? Does the presence of a comprehensive library on the central campus affect the quality of instruction afforded a student 100 (or 1,000) miles distant? These questions have been raised with regard to telecommunications-based learning at the postsecondary level, and how they are answered and the implications of their solutions will bear directly on their primary and secondary counterparts. Similarly, the use of technology-based instruction is affected by the way postsecondary education is financed. For example, the question arises as to the degree to which a state will subsidize the delivery of instruction to a distant learner, in comparison to the same instruction provided a resident student. This

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[45] Compare Ill. Rev. Stat. ch. 122, §2-3.25, pertaining to the setting of elementary and secondary standards, and Ill. Rev. Stat. Ch. 144, §187 pertaining to postsecondary education.

translates, for the public K-12 institution, to the manner through which distant learner enrollments are counted towards the student population that drives the funding formula.

The net effect of the special treatment of telecommunications-based distance learning at the postsecondary level has been to impose constraints upon the utilization of this technology that are independent of the needs of the learner population or the interests of the providing institutions. Perhaps the most egregious example will be found in the Veterans Education Assistance Act, commonly called the GI Bill, which expressly prohibits the payment of benefits to students who enroll in a program whose instruction is delivered through the medium of radio.[46] This limitation is not a bureaucratic flight of fancy: It is an expression of the will of the Congress, stimulated by a concern over the lack of control over the conduct of the learner in such a situation. Indeed, the Veterans Benefits programs afford a number of examples that are relevant to the pre-collegiate level as well as in the context of the utilization of telecommunication-based distance learning programs.

Another excellent example is the Veterans Administration's long-standing "seat time" rule, which establishes minimum weekly schedules of classes which must be met for a student to be eligible to receive his or

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46 "The Administrator (of the Veterans Administration) shall not approve the enrollment of an eligible veteran in any course to be pursued by open circuit television (except as herein provided) or radio. The Administrator may approve the enrollment of an eligible veteran in a course, to be pursued in residence, leading to a standard college degree which includes, as an integral part thereof, subjects offered through the medium of open circuit television, if the major portion of the course requires conventional classroom or laboratory attendance." 38 U.S.C. §1673 (c). (emphasis added.)

her benefits.[47] A school which deviates from the prescribed norms finds itself depriving its veteran students of the opportunity to receive the federal benefits to which they are entitled, despite the fact that the program is educationally sound and in all other respects meets the requirements of the law. In the celebrated case of Wayne State University v. Cleveland, the courts sustained the denial of eligibility for assistance of students enrolled in the school's "weekend college," on the basis that the temporal distribution of classes did not meet the VA's requirements.[48] The courts ruled in this manner even though in the aggregate the quantity (and, arguably, the quality, although this was not expressly litigated) of instruction did not differ from that offered in the regular academic program. The courts reasoned that while the standard promulgated by the VA may be contrary to instructional practice, Congress had granted the agency the power to define an eligible program for the purposes of distributing federal largesse.

While the facts of Wayne State did not entirely revolve around the use of telecommunications (although the students were enrolled in telecourses for part of their instruction), the case does stand for the proposition that the federal government, and by extension the states, may establish such standards for receipt of benefits as they deem fit, quite independent of what the institution considers educationally appropriate. Wayne State does not give the federal government the power to prescribe the manner of

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47 38 U.S.C. §1780. See also 38 C.F.R. §21.4200, 4230.

48 590 F.2d 627 (6th Cir. 1978), on remand 473 F.Supp. 8 (1979, E.D. Mich.) and on remand 498 F.Supp. 468 (E.D. Mich. 1980).

instruction or the schedule of classes the university may implement, and more than the limitation on radio courses could be construed as prohibiting their utilization. But by decreeing that particular instructional formats or delivery systems are inaccessible for the student who needs financial assistance of a certain kind (e.g., Veterans Benefits), the government has as surely chilled the utilization of that format or delivery system as if it prohibited its use. The effect is to constrain the adoption of innovative approaches, even where the needs for the learner population would dictate otherwise.

Conclusion

Telecommunications-based instruction is only now beginning to be taken seriously in primary and secondary education. Although in use for decades as an adjunct to traditional forms of instruction, it is of recent vintage that programs are being built around the telecommunications delivery system, instead of vice versa. The advent of cable and microwave distribution systems, the widespread use of video recordings, both tape and disc, and the microcomputer revolution have all come together to force substantial change in the way telecommunications-based learning fits into the scheme of pre-collegiate education. No longer can the claim be made that the traditional classroom is the paradigm of instruction: For an increasing number of subjects, the use of contemporary technology is becoming indispensible. While we have not achieved the level (or depth, depending upon one's point of view) where the teacher can or should be replaced by a video screen, we have clearly reached the point where the role of the teacher is evolving

into that of a facilitator of instruction provided through a variety of dissemination mechanisms. This in turn requires a revisiting of some dearly held concepts of what constitutes "quality" instruction, and what skills are needed to enable the student to make use of these new forms of instruction.

There is nothing in federal or state law that irrevocably precludes the adoption of the fully electronic instructional system. Not a single state's statutes make it impossible for a school system to provide a full academic program through the use of various telecommunications systems. The impediments that do exist are peripheral to the basic concept of the telecommunications-based delivery system. Every issue of financing, of interjurisdictional delivery and of federal-state conflict is amenable of solution, assuming there is a recognition of the value of the instructional service affected by it.

In reality the basic policy issues surrounding the expansion of telecommunications-based learning are not related to the technological aspects of the instruction. Rather, they are tied to the willingness of our society to let go of a traditional system that has served since the adoption of the concert of formal schooling. It is an old maxim that the law is an impediment only so long as the lawmakers wish it to be so. It is the educators who must demonstrate that the cause of learning is better served by encouraging the development of telecommunications-based instruction, rather than its curtailment.

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TABLES

TABLE A. Compendium of clauses mandating the provision of public education.

TABLE B. States which provide for financial support for private elementary or secondary education.

TABLE C. States which require non-public school students to take competency or achievement tests.

TABLE D. Compendium of state statutes requiring compulsory school attendance or compulsory education.

TABLE E. Matrix of state requirements for compulsory and home (informal) education.

TABLE F. Compendium of state requirements for the certification of instructors engaged in home (informal) education.

All tables except Table E courtesy Education Commission of the States. Table E is derived from tables provided by ECS.

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TABLE -A-

The Education Clauses in State Constitutions

Every state constitution contains at least one education clause. This table includes the clause or clauses (1) requiring a public school system, (2) concerning the care and education of the handicapped and (3) prohibiting discrimination in education. Other clauses, such as prohibitions on aid to sectarian schools, are not included. The basic clauses can be categorized into three general types, although some could fit under more than one category. The categories are: "free public schools open to all" (South Carolina); a "thorough and efficient" requirement (New Jersey); and, finally, more generalized language (New Hampshire). All language listed below is quoted directly from the state constitutions. *See* the text in Chapter II for an analysis of these provisions.

Alabama

The legislature shall establish, organize and maintain a liberal system of public schools throughout the state for the benefit of the children thereof between the ages of seven and 21 years. . . . *Ala. Const. art. 14, sec. 256.*

Alaska

The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution. *Alaska Const. art. VII, sec. 1.*

American Samoa

The government shall operate a system of free and non-sectarian public education. The government will also encourage qualified persons of good character to acquire further education, locally and abroad, both general and technical, and thereafter to return to American Samoa to the end that the people thereof may be benefited. *A.S. Rev. Const. art. 1, sec. 15.*

Arkansas

[T]he State shall ever maintain a general, suitable and efficient system of free schools whereby all persons in the State between the ages of six and twenty-one years may receive gratuitous instruction. *Ark. Const. art. 14, sec. 1.*

It shall be the duty of the General Assembly to provide by law for the support of institutions for the education of the deaf and dumb and the blind, and also for the treatment of the insane. *Ark. Const. art. 19, sec. 19.*

Arizona

The University and all other State educational institutions shall be open to students of both sexes, and the instruction furnished shall be as nearly free as possible. The Legislature shall provide for a system of common schools by

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which a free school shall be established and maintained in every school district for at least six months in each year, which school shall be open to all pupils between the ages of six and twenty-one years. *Ariz. Const. art. II, sec. 6.*

The Legislature shall also enact such laws as shall provide for the education and care of the deaf, dumb and blind. *Ariz. Const. art. II, sec. 1.*

California

The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year . . . . *Cal. Const. art. 9, sec. 5.*

A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement. *Cal. Const. art. 9, sec. 1.*

Colorado

The general assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, wherein all residents of the state, between the ages of six and twenty-one years, may be educated gratuitously. *Colo. Const. art. IX, sec. 2.*

Educational, reformatory and penal institutions, and those for the benefit of the insane, blind, deaf and mute, and such other institutions as the public good may require, shall be established and supported by the state, in such manner as may be prescribed by law. *Colo. Const. art. VIII, sec. 1.*

Connecticut

There shall always be free public elementary and secondary schools in the state. *Conn. Const. art. 8, sec. 1.*

Delaware

The General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools and may require by law that every child, not physically or mentally disabled, shall attend the public school, unless educated by other means. *Del. Const. art. X, sec. 1.*

The General Assembly, notwithstanding any other provision of this Constitution, may provide by an Act of the General Assembly, passed with the concurrence of a majority of all the members elected to each House, for the transportation of students of non-public, non-profit Elementary and High schools. *Del. Const. art. X, sec. 5.*

District of Columbia

The control of the public schools in the District of Columbia is vested in a Board of Education to consist of eleven members. *Acts Relating to Establishment of the District, District of Columbia Self-Government and Government Reorganization Act, D.C. Code Ann. sec. 495 (Michie 1981).*

Florida

Adequate provision shall be made by law for a uniform system of free public schools and for the establishment, maintenance and operation of institutions of higher learning and other public education programs that the needs of the people may require. *Fla. Const. art. IX, sec. 1.*

No person shall be deprived of any right because of race, religion or physical handicap. *Fla. Const. art. I, sec. 2.*

Georgia

The provision of an adequate education for the citizens shall be a primary obligation of the State of Georgia, the expense of which shall be provided for by taxation. *Ga. Const. art. VIII, sec. I (Ga. Code sec. 2-4901).*

Special schools, including schools for exceptional children, are authorized. *Ga. Const. art. VIII, sec. IX (Ga. Code sec. 2-5701).*

Guam

The Governor shall provide an adequate public educational system . . . . *Guam Organic Act sec. 1421g(b).*

Hawaii

The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable, including physical facilities therefor. There shall be no discrimination in public education institutions because of race, religion, sex or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian or private educational institution. *Hawaii Const. art. X, sec. 1.*

The State shall have the power to provide for the treatment and rehabilitation of handicapped persons. *Hawaii Const. art. IX, sec. 2.*

Idaho

The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho to establish and maintain a general, uniform and thorough system of public free common schools. *Idaho Const. art. IX, sec. 1.*

Educational, reformatory, and penal institutions, and those for the benefit of the insane, blind, deaf and dumb, and such other institutions as the public good may require, shall be established and supported by the state in such manner as may be prescribed by law. *Idaho Const. art. X, sec. 1.*

Illinois

A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities. The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law. The State has primary responsibility for financing the system of public education.[1] *Ill. Const. art. X, sec. 1.*

Indiana

Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general uniform system of Common schools, wherein tuition shall be without charge, and equally open to all. *Ind. Const. art. 8, sec. 1.*

It shall be the duty of the general assembly to provide, by law for the support of institutions for the education of the deaf and dumb and blind, and treatment of the insane. *Ind. Const. art. 9, sec. 1.*

Iowa

The Board of Education shall provide for the education of all the youths of the State, through a system of Common Schools and

[1] The legislative committee which proposed this language recognized that this language expanded the scope of education: "the objective that all persons be educated to the limits of their capacities would require expansion beyond the traditional public school programs. It recognizes the need of the person with a physical handicap or mental deficiency who nevertheless is educable." Quoted in Constitutional Commentary to Ill. Const. art. X, sec. 1 (Smith-Hurd 1971). These commentators state that this provision therefore supercedes a 1958 case which held there was no obligation to provide free school training for the mentally incompetent. In *Pierce v. Board of Educ. of Chicago*, 69 Ill. 2d 89, 12 Ill. Dec. 731 (1977), the court held that this provision is not self-enacting, and held that "[w]hether the Board has the duty to place the plaintiff in a special education class can only be ascertained by examining the applicable statutes and regulations. . . ."

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such schools shall be organized and kept in each school district at least three months in each year. Any district failing, for two consecutive years, to organize and keep up a school as aforesaid, may be deprived of their portion of the school fund. *Iowa Const. art. IX, sec. 12.*

The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. *Iowa Const. art. IX, sec. 3.*

Kansas

No tuition shall be charged for attendance at any public school to pupils required by law to attend such school. *Kan. Const. art. 6, sec. 6(b).*

The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law. *Kan. Const. art. 6, sec. 1.*

Institutions for the benefit of mentally or physically incapacitated or handicapped persons, and such other benevolent institutions as the public good may require, shall be fostered by the state, subject to such regulations as may be prescribed by law. *Kan. Const. art. 7, sec. 1.*

The legislature may levy a permanent tax for the creation of a building fund for institutions caring for those who are mentally ill, retarded, visually handicapped, with a handicapping hearing loss, tubercular or for children who are dependent, neglected or delinquent and in need of residential institutional care or treatment and for institutions primarily designed to provide vocational rehabilitation for handicapped persons. *Kan. Const. art. 7, sec. 6.*

Kentucky

The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State. *Ky. Const. sec. 183.*

Louisiana

The legislature shall provide for the education of the people of the state and shall establish and maintain a public education system. *La. Const. art. 8, sec. 1.*

Maine

A general diffusion of the advancement of education being essential to the preservation of the rights and liberties of the people to promote this important object . . . , it is the [duty of the legislature] to require, the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools. *Me. Const. art. VIII, sec. 8.*

Maryland

The General Assembly, at its first session after the adoption of this Constitution, shall, by law, establish throughout the state a thorough and efficient system of free public schools. *Md. Const. art. VIII, sec. 1.*

Massachusetts

Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the University at Cambridge, public schools and grammar schools in the towns . . . . *Mass. Const. ch. 5, sec. 2.*

No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, denied the benefits of, or be subject to discrimination under any program or activity within the commonwealth. *Mass. Const. amend. art. CXIV.*

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Michigan

The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin. *Mich. Const. art. VIII, sec. 2.*

Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and means of education shall forever be encouraged. *Mich. Const. art. VIII, sec. 1.*

Institutions, programs and services for the care, treatment, education or rehabilitation of those inhabitants who are physically, mentally or otherwise seriously handicapped shall always be fostered and supported. *Mich. Const. art. VIII, sec. 8.*

Minnesota

The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state. *Minn. Const. art. XIII, sec. 1.*

Mississippi

The legislature, may in its discretion, provide for the maintenance and establishment of free public schools for all children between the ages of six (6) and twenty-one (21) years. *Miss. Const. art. 8, sec. 201.*

It shall be the duty of the legislature to provide by law for the support of institutions for the education of the deaf, dumb and blind. *Miss. Const. art. 8, sec. 209.*

Missouri

[A] general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state not in excess of 21 years. *Mo. Const. art. IX, sec. 1(A).*

Montana

The legislature shall provide a basic system of free quality public elementary and secondary schools. *Mont. Const. art. X, sec. 1(3).*

It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state. *Mont. Const. art. X, sec. 1.*

[N]o person shall be refused admission to any public educational institution on account of sex, race, religion, creed, political beliefs or national origin. *Mont. Const. art. X, sec. 7.*

Nebraska

The Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years. The Legislature may provide for the education of other persons in educational institutions owned and controlled by the state or a political subdivision thereof. *Neb. Const. art. VII, sec. 1.*

[In the prohibition against appropriation of public funds to private schools, an exception is made for the education of handicapped children:] [t]he Legislature may provide that the state or any political subdivision thereof may contract with institutions not wholly owned or controlled by the state or any political subdivision to provide for educational or other services for the benefit of children under the age of twenty-one years who are handicapped, as that term is from time to time defined by the Legislature, if such services are nonsectarian in nature. *Neb. Const. art. VII, sec. 11.*

Nevada

The legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year, and any school district which shall allow instruction of a sectarian character therein may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools. *Nev. Const. art. 11, sec. 2.*

New Hampshire

[I]t shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools . . . . *N.H. Const. art. 83.*

New Jersey

The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the state between the ages of five and eighteen years. *N.J. Const. art. 8, sec. 4.*

New Mexico

A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained. *N.M. Const. art. XII, sec. 1.*

Provision shall be made for the establishment and maintenance of a system of public schools which shall be open to all the children of the state and free from sectarian control, and said schools shall always be conducted in English *N.M. Const. art. XXI, sec. 4.*

New York

The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of the state may be educated. *N.Y. Const. art. 11, sec. 1.*

North Carolina

The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students. *N.C. Const. art. IX, sec. 2(1).*

Education encouraged. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools, libraries and the means of education shall forever be encouraged. *N.C. Const. art. IX, sec. 1.*

North Dakota

The Legislature shall provide for a uniform system of free public schools throughout the state.[2] *N.D. Const. art. VIII, sec. 2.*

A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota. *N.D. Const. art. VIII, sec. 1.*

Ohio

The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state.[3] *Ohio Const. art. VI, sec. 2.*

Oklahoma

The Legislature shall establish and maintain a system of free public schools wherein all children of the state may be educated. *Okla. Const. art. 13, sec. 1.*

The Legislature shall provide for the establishment and support of institutions for the care and education of persons within the state who are deaf, deaf and mute or blind. *Okla. Const. art. 13, sec. 2.*

Oregon

The Legislative Assembly shall provide by law for the establishment of a uniform, and general system of common schools. *Or. Const. art. VIII, sec. 3.*

Pennsylvania

The General Assembly shall provide for the maintenance of a thorough and efficient system of public education to serve the needs of the Commonwealth. *Pa. Const. art. 3, sec. 14.*

Puerto Rico

Every person has the right to an education which shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. There shall be a system of free and wholly non-sectarian public education. Instruction in the elementary and secondary schools shall be free and shall be compulsory in the elementary schools to the extent permitted by the facilities of the state. . . . Nothing contained in this provision shall prevent the state from furnishing to any child non-educational services established by law for the protection or welfare of children. *P.R. Const. art. II, sec. 5.*

The commonwealth also recognizes the existence of the following human rights: The right of every person to receive free elementary and secondary education. *P.R. Const. art. II, sec. 20.*

Rhode Island

[I]t shall be the duty of the general assembly to promote public schools, and to adopt all means which they may deem necessary and proper to secure to the people the advantages and opportunities of education. *R.I. Const. art. 13, sec. 1.*

South Carolina

The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the state and shall establish, organize and support such other public institutions of learning as may be desirable. *S.C. Const. art. XI, sec. 3.*

South Dakota

The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education. *S.D. Const. art. VIII, sec. 1.*

Tennessee

The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools. *Tenn. Const. art. 11, sec. 12.*

Texas

A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the legislature of the state to establish and make suitable provision for the support and maintenance of an efficient system of public free

[2]This clause was held to give all handicapped children a right to a public school education, in *In re G.H.*, 214 N.W.2d 441 (N.D. 1974).

[3]This clause has been interpreted in *State ex rel. Core v. Green*, 160 Ohio St. 176, 11 N.E.2d 167 (1953), to give the general assembly broad powers to provide a thorough an efficient system of common schools.

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schools. *Tex. Const. art. VII, sec. 1.*

Utah

The Legislature shall provide for the establishment and maintenance of a uniform system of public schools, which shall be open to all children of the State and be free from sectarian control. *Utah Const. art. X, sec. 1.*

Institutions for the Deaf and Dumb, and for the Blind, are hereby established . . . [there] shall be a perpetual fund for the maintenance of said Institutions. It shall be a trust fund . . . . *Utah Const. art. X, sec. 10.*

Vermont

Laws for the encouragement of virtue and prevention of vice and immorality ought to be constantly kept in force, and duly executed; and a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youth. *Vt. Const. ch. II, sec. 64.*

Virginia

The General Assembly shall provide for a system of free public elementary and secondary schools for all children throughout the Commonwealth and shall seek to ensure that an educational program of high quality is established and continually maintained. *Va. Const. art. VIII, sec. 1.*

Standards of quality . . . shall be determined and prescribed by the Board of Education, subject to revision only by the General Assembly. *Va. Const. art. VIII, sec. 2.*

The General Assembly shall provide for the compulsory elementary and secondary education of every eligible child of appropriate ages. *Va. Const. art. VIII, sec. 3.*

Virgin Islands

[No provision in Constitution].

Washington

The legislature shall provide for a general and uniform system of public schools. *Wash. Const. art. IX, sec. 2.*

It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex. *Wash. Const. art. IX, sec. 1.*

West Virginia

The legislature shall provide, by general law, for a thorough and efficient system of free schools. *W. Va. Const. art. XII, sec. 1.*

The legislature . . . shall, whenever it may be practicable, make suitable provision for the blind, mute and insane, and for the organization of such institutions of learning as the best interests of general education in the State may demand. *W. Va. Const. art. XII, sec. 12.*

Wisconsin

The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of 4 and 20 years; and no sectarian instruction shall be allowed therein; but the legislature by law may, for the purpose of religious instruction outside the district schools, authorize the release of students during regular school hours. *Wis. Const. art. 10, sec. 3.*

Wyoming

The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade, a university with such technical and professional departments as the public good may require and the means of the state allow, and such other institutions as may be necessary. *Wyo. Const. art. 7, sec. 1.*

TABLE -B-

DO STATE STATUTES PROVIDE FOR ANY FORM OF DIRECT FINANCIAL AID TO FAMILIES WITH CHILDREN IN PRIVATE ELEMENTARY OR SECONDARY SCHOOLS? -- OR TO THE SCHOOLS THEMSELVES? (SPECIFY IF LOAN OR GRANT)

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ALABAMA
No provision.

ALASKA
No provision.

AMERICAN SAMOA
No provision.

ARKANSAS
Yes. "[W]henever, for any reason beyond his or her control, any person of school age, except those recognized as having special problems, shall be prohibited from attending public school, such person . . . may make application to the local school district and/or the State Department of Education for financial aid." Ark. Stat. Ann. sec. 80-1545 (1980).

There is also a provision for financial aid to a student who objects to racial "co-mingling" in a school, but it is clearly unconstitutional under the federal equal protection clause. See Ark. Stat. Ann. sec. 80-1530 (1980).

ARIZONA
No provision.

CALIFORNIA
No provision.

COLORADO
No provision.

CONNECTICUT
Yes. Private schools may receive the direct costs of programs designed to increase the educational achievement of disadvantaged children as designated under the federal Title I of the Elementary and Secondary Education Act of 1965. Conn. Gen. Stat. Ann. sec. 10-266 (l) (West 1958).

DELAWARE
No provision.

DISTRICT OF COLUMBIA
No provision.

FLORIDA
No provision.

GEORGIA
Yes. Tuition costs may be reimbursed to parents wishing to send their children to nonsectarian private schools, if the county board determines that a need exists for such payments. The grants are restricted to students attending a private school which meets minimum academic standards prescribed by the State Board of Education. The state superintendent must furnish a list of private schools meeting such standards. Regulations governing the grant program may not deal in any manner with the requirements of the private school relating to eligibility of pupils who may be admitted, or with the physical plant facilities of the school. Ga. Code Ann. secs. 20-2-640 through 20-2-650 (1982).

GUAM
No provision.

HAWAII
No provision.

IDAHO
No provision.

ILLINOIS
No general provision. See, People ex. rel., Klinger v. Howlett, 305 N.E.2d 129 (1972) (holding a previous grant

plan unconstitutional). However, there is a state fund established to provide grants for innovative secular educational programs in public or private schools. Ill. Ann. Stat. ch. 122, secs. 1051 through 1070 (Smith-Hurd Supp. 1983).

INDIANA
No provision.

IOWA
No provision.

KANSAS
No provision.

KENTUCKY
No provision.

LOUISIANA
Yes. Parents whose income does not exceed $7,500.00 per year, and whose child attends a nonpublic school shall be reimbursed $50.00 per student in grades 1 through 8 and $75.00 per student in grades 9 through 12. La. Rev. Stat. Ann. secs. 17:2990.1 through 17:2990.6 (West 1982).

MAINE
Yes. "A private secondary school may be approved for the receipt of public funds for tuition purposes only if it: meets the requirements for basic school approval . . . ; is non-sectarian . . . ; is incorporated under the laws of the State of Maine or of the United States; and complies with the operating and auditing requirements of [the State Board of Education]. Me. Rev. Stat. Ann. tit. 20-A, sec. 2951 (1983).

MARYLAND
No provision.

MASSACHUSETTS
No provision.

MICHIGAN
No. "No school district shall apply any of the moneys

received from primary school funds to any school of sectarian character . . . ." Mich. Comp. Laws Ann. sec. 340.366 (West 1976).

"Nothing in this [private school] act contained shall be construed so as to permit any parochial denominational, or private school to participate in the distribution of the primary school fund." Mich. Comp. Laws Ann. sec. 388.577 (West 1976).

MINNESOTA
No provision.

MISSISSIPPI
No provision.

MISSOURI
No provision.

MONTANA
No provision.

NEBRASKA
No provision.

NEVADA
No provision.

NEW HAMPSHIRE
No provision. However a "test of education voucher programs" when federal funds become available is authorized. The programs "are intended to aid students and not to aid any particular school or type of school." N.H. Rev. Stat. Ann. secs. 194-A:1 through 194-A:8 (1977)

NEW JERSEY
No provision.

NEW MEXICO
No provision.

NEW YORK

No. A statute providing for grants to private schools for maintenance and repair, and tuition reimbursement for low income parents was held unconstituional. Committee for Public Education v. Nyquist, 413 U.S. 756 (1976) (construing N.Y. Educ. Law secs. 549 through 553, and secs. 559 through 563 (McKinney Supp. 1982)).

NORTH CAROLINA
No provision.

NORTH DAKOTA
No provision.

OHIO
Yes. Nonpublic schools are reimbursed (not to exceed $100.00 per pupil) for the "[a]ctual mandated service administrative and clerical cost incurred by such school . . . in preparing maintaining, and filing reports, forms, and records, and in providing such other administrative and clerical services that are not an integral part of the teaching process as may be required by state law or rule . . . ." Ohio Rev. Code Ann. sec. 3317.063 (Page Supp. 1982).

OKLAHOMA
No provision.

OREGON
No provsion.

PENNSYLVANIA
Yes. The Parent Reimbursement Act for Nonpublic Education creates the Parent Reimbursement Fund which allows tuition reimbursement for qualifying parents of $75 for each child enrolled in a private elementary school or $150 for each child enrolled in a secondary school or the actual amount of tuition, whichever is less. Pa. Stat. Ann. tit. 24, sec. 5706 (Purdon Supp. 1983). See, Pa. Stat. Ann. tit. 24, secs. 5701 through 5710 (Purdon Supp. 1983).

PUERTO RICO
No provision.

RHODE ISLAND

No provision.

SOUTH CAROLINA
No provision. A tuition program (S.C. Code sec. 59-41-20) was declared unconstitutional in Brown v. South Carolina State Bd. of Educ., 296 F. Supp. 199 (D.S.C. 1968).

SOUTH DAKOTA
No provision.

TENNESSEE
No provision.

TEXAS
No provision.

UTAH
No provision.

VERMONT
No. An earlier aid statute which paid salaries of private school teachers was held unconstitutional in Americans for Separation of Church and State v. Oakey, 339 F. Supp. 545 (D. Vt. 1972).

VIRGINIA
No provision.

VIRGIN ISLANDS
Yes. "Subsidies from Government funds available for such purpose may be granted to schools other than public schools, for strictly educational purposes . . . . However, no subsidy or financial help shall be given by the Government to denominational or sectarian schools or institutions. Subsidies may be withdrawn at any time by the Board upon the recommendation of the Commissioner." V.I. Code Ann. tit. 17, sec. 191 (1976).

WASHINGTON
No provision.

WEST VIRGINIA

No provision.

WISCONSIN
No provision.

WYOMING
No provision.

TABLE -C-

DO STATE STATUTES REQUIRE STUDENTS IN PRIVATE SCHOOLS TO TAKE ANY FORM OF TEST?

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ALABAMA
No provision.

ALASKA
Yes. Private schools have an option between using certified teachers or testing the children. A child is excused from compulsory attendance in a public school if the child is in "attendance at a private school in which the teachers are certified . . . or . . . in attendance at a private school in which the average student proficiency is not less than the average proficiency found in the public schools in the area as measured by national achievement tests . . . ." Alaska Stat. secs. 14.30.010(b)(1)(A) and (C) (1982). "The Commissioner may furnish final examination questions for eighth grade pupils in private or denominational schools and grant eighth grade diplomas in the same manner as in the public schools." Alaska Stat. sec. 14.45.020(1982).

AMERICAN SAMOA
No provision.

ARKANSAS
No provision.

ARIZONA
No provision.

CALIFORNIA
No provision.

COLORADO
No provision.

CONNECTICUT

Yes. There is a ninth grade statewide proficiency examination, covering basic reading, language arts and mathematics skills. The test applies to pupils in public schools and endowed or incorporated private schools. Although pupils who tested below the statewide level of expected performance must be annually retested, no school (public or private) is permitted to require achievement of a satisfactory test score as a graduation requirement. Conn. Gen. Stat. Ann. sec. 10-14n (West Supp. 1983).

DELAWARE
Yes. In order to qualify for an exemption from the public school attendance requirement a child must take "a written examination" to show that he is "elsewhere receiving regular and thorough instruction in the subjects prescribed for the the public schools of the State, in a manner suitable to children of the same age and stage of advancement." Del. Code Ann. tit. 14, sec. 2703(a) (Supp. 1982). However, a written certificate from a private school teacher "shall be satisfactory evidence" to school officials that the child is receiving "regular and thorough instruction as required." Del. Code Ann. tit. 14, sec. 2703(b) (1981).

DISTRICT OF COLUMBIA
No provision.

FLORIDA
No provision.

GEORGIA
No provision.

GUAM
No provision.

HAWAII
No provision.

IDAHO
No provision.

ILLINOIS
No provision.

INDIANA
No provision.

IOWA
Yes. Private schools seeking exemption from state curriculum requirements must offer "proof of achievement," based on testing or evaluation." Iowa Code Ann. sec. 280.3 (West Supp. 1983). Also, "The board of directors of each public school district and the authorities in charge of each private school shall . . . establish and implement continuously evaluated . . . plans to attain the desired levels of pupil achievement." Iowa Code Ann. sec. 280.12(3) (West Supp. 1983).

KANSAS
Yes. "[I]t is the purpose of the educational system in Kansas to insure that each pupil is afforded similar opportunities for learning without regard to local geographical differences or varying economic factors . . . [t]he state in cooperation with schools may determine whether such purpose is being accomplished through development and administration of a minimum competency assessment program." Kan. Stat. Ann. sec. 72-9401 (Supp. 1982). Tests are given in the second, fourth, sixth, eighth and eleventh grades. Kan. Stat. Ann. sec. 72-9404 (Supp. 1982).

KENTUCKY
No. But see Kentucky State Bd. for Elementary & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979) (holding that if the legislature wishes to monitor the work of private and parochial schools in accomplishing the constitutional purpose of compulsory education, it may do so by an appropriate standardized achievement testing program, and if the results show that one or more private or parochial schools have failed to reasonably accomplish the constitutional purpose, the Commonwealth may then withdraw approval and seek to close them for they no longer fulfill the purpose of "schools.")

LOUISIANA
No provision.

MAINE

No provision.

MARYLAND
No provision.

MASSACHUSETTS
No provision.

MICHIGAN
No provision.

MINNESOTA
No provision.

MISSISSIPPI
No provision.

MISSOURI
Yes. "No pupil shall receive a certificate of graduation from any public or private school . . . unless he has satisfactorily passed an examination on the provisions and principles of the constitution of the United States and of the state of Missouri, and in American history and American institutions." Mo. Ann. Stat. sec. 170.011(1) (Vernon 1959).

MONTANA
No provision.

NEBRASKA
No provision.

NEVADA
Yes. Children must pass an examination on the constitutions of Nevada and the United States. Nev. Rev. Stat. sec. 394.150 (1979).

NEW HAMPSHIRE
No provision.

NEW JERSEY
No. However, there is a new statewide student

competency test required for high school diplomas. It does not mention private school students, but probably applies to them. N.J. Stat. Ann. sec. 18A:7C-1 through 7C-9 (West Supp. 1983).

NEW MEXICO
No provision.

NEW YORK
No. However, there is a state Regents' testing program of high school students, which is open to any student. N.Y. Educ. Law sec. 208 (McKinney 1969).

NORTH CAROLINA
Yes. "Each private church school or school of religious charter shall administer, at least once in each school year, a nationally standardized test, or other nationally standardized equivalent measurement selected by the chief administrative officer of such school, to all students enrolled or regularly attending grades one, two, three, six and nine. The nationally standardized test . . . must measure achievement in the areas of English grammar, reading, spelling and mathematics." N.C. Gen. Stat. sec. 115C-549 (1983). "To assure that all high school graduates possess those minimum skills and that knowledge thought necessary to function in society, each private church school or school of religious charter shall administer at least once in each school year, a nationally standardized test or other nationally standardized equivalent measure selected by the chief administrative officer of such school, to all students enrolled and regularly attending the eleventh grade." N.C. Gen. Stat. sec. 115C-550 (1983).

NORTH DAKOTA
No provision.

OHIO
No provision.

OKLAHOMA
No provision.

OREGON
No provision.

PENNSYLVANIA
No provision.

PUERTO RICO
No provision.

RHODE ISLAND
Yes. Pupils attending elementary and secondary approved schools "shall be administered tests under the supervision of the state department of education in accordance with said program." R. I. Gen. Laws sec. 16-22-9 (1981).

SOUTH CAROLINA
No provision.

SOUTH DAKOTA
Yes. "The child [in alternative instruction] shall annually take a nationally standardized achievement test of the basic skills, such test to be the same as the test designated to be used in the public school district where the child is instructed." S.D. Codified Laws Ann. sec. 13-27-2 (1982).

TENNESSEE
No. But see "Local boards may place students transferring from a church related school to a public school in a grade level based upon the student's performance on a test administered by the board for that purpose." Tenn. Code Ann. sec. 49-5203 (1977).

TEXAS
No provision.

UTAH
No provision.

VERMONT
No provision.

VIRGINIA
No provision.

VIRGIN ISLANDS
No provision for private schools.

WASHINGTON
No provision.

WEST VIRGINIA
Yes. Private schools which do not choose to be approved by county boards of education must participate in a comprehensive basic skills standardized testing program. to meet county board approval requirements. Annual testing is to be done in English, grammar, reading, social studies, science and mathematics. School composite test results shall be furnished to the state upon request. If such results fall below the fortieth percentile on selected tests for any single year, the school shall begin a remedial program. If results continue below that level for more than two consecutive years, attendance at the school will no longer qualify students for an exemption from compulsory public school attendance until the standards are met. W. Va. Code sec. 18-28-3 (Supp. 1983).

WISCONSIN
No provision.

WYOMING
No provision.

TABLE -D-

CITATION TO STATE STATUTE REQUIRING COMPULSORY SCHOOL ATTENDANCE OR COMPULSORY EDUCATION

COPYRIGHTED, EDUCATION COMMISSION OF THE STATES, January 12, 1984

ALABAMA
Ala. Code secs. 16-28-1 through 16-28-24 (1975 & Supp. 1982).

ALASKA
Alaska Stat. secs. 14.30.010 through 14.30.050 (1982).

AMERICAN SAMOA
Am. Samoa Code Ann. secs. 16.0302 through 16.0308 (1983).

ARKANSAS
Ark. Stat. Ann. secs. 80-1501 through 80-1516 (1980 & Supp. 1983).

ARIZONA
Ariz. Rev. Stat. Ann. sec. 15-801 (Supp. 1982).

CALIFORNIA
Cal. Educ. Code secs. 48200 through 48342 (West 1978 & Supp. 1983).

COLORADO
Colo. Rev. Stat. secs. 22-33-101 through 22-33-109 (1973 & Supp. 1982).

CONNECTICUT
Conn. Gen. Stat. Ann. secs. 10-184 through 10-201 (West 1958 & Supp. 1983).

DELAWARE
Del. Code Ann. tit. 14, secs. 2701 through 2712 (1981 & Supp. 1982)

DISTRICT OF COLUMBIA
D.C. Code secs. 31-401 through 31-413 (1981).

FLORIDA
Fla. Stat. Ann. secs. 232.01 through 232.277 (West 1977 & Supp. 1983).

GEORGIA
Ga. Code Ann. secs. 20-2-690 through 20-2-702 (1982).

GUAM
Guam Code Ann. tit. 17, secs. 6101 through 6109 (1982).

HAWAII
Hawaii Rev. Stat. secs. 298-1 through 298-26 (1976 and Supp. 1982).

IDAHO
Idaho Code secs. 33-201 through 33-208 (1981 and Supp. 1983).

ILLINOIS
Ill. Ann. Stat. ch. 122, secs. 26-1 through 26-12 (Smith-Hurd 1970 and Supp. 1983).

INDIANA
Ind. Code Ann. secs. 20-8.1-3-1 through 20-8.1-3-20 (Burns 1980 & Burns Supp. 1983).

IOWA
Iowa Code Ann. secs. 299.1 through 299.24 (West 1981 and Supp. 1981

KANSAS
Kan. Stat. Ann. secs. 72-1101 through 72-1116 (1980).

KENTUCKY
Ky. Rev. Stat. Ann. secs. 159.010 through 159.990 (1980 & Supp. 1982).

LOUISIANA
La. Rev. Stat. Ann. secs. 17:221 through 17:226 (West 1982 and Supp. 1983).

MAINE

Me. Rev. Stat. Ann. tit. 20-A, secs. 5001 through 5053 (1983).

MARYLAND
Md. Educ. Code Ann. secs. 7-301 through 7-303 (1978 and Supp. 1983)

MASSACHUSETTS
Mass. Gen. Laws ch. 76, secs. 1 through 20 (1982).

MICHIGAN
Mich. Comp. Laws Ann. secs. 380.1561 through 380.1599 (1976 & West Supp. 1983).

MINNESOTA
Minn. Stat. secs. 120.05 through 120.15 (West 1979 & Supp. 1983).

MISSISSIPPI
Miss. Code Ann. secs. 37-13-91 through 37-13-105 (1972 and Supp. 1982).

MISSOURI
Mo. Ann. Stat. secs. 167.011 through 167.191 (Vernon 1959 and Supp. 1983).

MONTANA
Mont. Code Ann. secs. 20-5-101 through 20-5-108 (1981).

NEBRASKA
Neb. Rev. Stat. secs. 79-201 through 79-216 (1982).

NEVADA
Nev. Rev. Stat. secs. 392.040 through 392.150 (1981).

NEW HAMPSHIRE
N.H. Rev. Stat. Ann. secs. 193:1 through 193:7 (1977).

NEW JERSEY
N.J. Stat. Ann. secs. 18A:38-25 through 18A:38-31 (West 1968 & Supp. 1983).

NEW MEXICO

N.M. Stat. Ann. secs. 22-12-1 through 22-12-7 (1978 and Supp. 1983 and N.M. Const. art. XII, sec. 31.

NEW YORK
N.Y. Educ. Law secs. 3201 through 3234 (McKinney 1981 & Supp. 1982).

NORTH CAROLINA
N.C. Gen. Stat. secs. 115C-378 through 115C-385 (1983).

NORTH DAKOTA
N.D. Cent. Code secs. 15-34.1-01 through 15-34.1-05 (1981 & Supp. 1983).

OHIO
Ohio Rev. Code Ann. secs. 3321.01 through 3321.99 (Page 1980 and Supp. 1982).

OKLAHOMA
Okla. Stat. Ann. tit. 70, secs. 10-101 through 10-108 (West 1972 and Supp. 1982).

OREGON
Or. Rev. Stat. secs. 339.005 through 339.030 (1981).

PENNSYLVANIA
Pa. Stat. Ann. tit. 24, secs. 13-1326 through 13-1357 (Purdon 1962 and Supp. 1983).

PUERTO RICO
P.R. Laws Ann. tit. 18, secs. 71 through 81 (1974 & Supp. 1982).

RHODE ISLAND
R.I. Gen. Laws secs. 16-19-1 through 16-19-9 (1981).

SOUTH CAROLINA
S.C. Code secs. 59-65-10 through 59-65-90 (1976 and Supp. 1982).

SOUTH DAKOTA
S.D. Codified Laws Ann. secs. 13-27-1 through 13-27-28

(1982).

TENNESSEE
Tenn. Code Ann. secs. 49-1701 through 49-1777 (1977 and Supp. 1983).

TEXAS
Tex. Educ. Code Ann. secs. 21.032 through 1.040 (Vernon 1972 and Supp. 1982).

UTAH
Utah Code Ann. secs. 53-24-1 through 53-24-9 (1981).

VERMONT
Vt. Stat. Ann. tit. 16, secs. 1121 through 1129 (1974 & Supp. 1983)

VIRGINIA
Va. Code secs. 22.1-254 through 22.1-269 (1980 and Supp. 1983).

VIRGIN ISLANDS
V.I. Code Ann. tit. 17, secs. 81 through 97 (1976 and Supp. 1982).

WASHINGTON
Wash. Rev. Code sec. 28A.27 (1982).

WEST VIRGINIA
W. Va. Code secs. 18-8-1 through 18-8-10 (1977 & Supp. 1983).

WISCONSIN
Wis. Stat. Ann. sec. 118.15 (West Supp. 1983).

WYOMING
Wyo. Stat. secs. 21-4-101 through 21-4-107 (1977, as amended, Supp. 1983).

TABLE -E-

It is interesting to compare the standards that are applied for home instruction in the context of their applicability to telecommunications-based learning. For example, as will be seen in the accompanying matrix, a third of the states have established minimum daily hours for the provision of instruction in the public schools, and many of these have carried these same hours over into the requirements for informal "home" instruction. By extension, a telecommunications based system would have to comply with the same temporal standard, raising the question of how such a rule could be enforced, and, of greater importance, whether there is an effective equivalency between one hour of classroom instruction and an hour before a computer console. The statutory provisions do not take these factors into account.

The accompanying matrix is derived from information provided by the Education Commission of the States. Copyright ECS 1984.

STATE TABLES

Description of Columns:

#1. Minimum number of hours of instruction required under state law. (II(D)(1))

#2. Minimum number of days of instruction required under state law. (II(D)(2))

#3. Does state compulsory education law provide exception for home instruction? (II(E)(2))

#4. Is home instruction expressly permitted under state law? (IV)

#5. If home instruction is permitted, does state law require a minimum number of hours of instruction? If so, how many? (IV(D)(1))

#6. If home instruction is permitted, does state law require a minimum number of days of instruction each year? If so, how many? (IV(D)(2))

#7. If home instruction is permitted, does state law require the submission of curricula or other materials to public officials for review? If so, to whom? (IV(D)(4))

#8. If home instruction is permitted, does state law require the program be registered or approved by public officials? If so, by whom? (IV(C))

#9. Does state law excuse a child from compulsory attendance on the basis of distance from school? If so, what is the basis for the exception? (Number is miles.) (II(E)(6))

#10. Does state law excuse a child from compulsory attendance on the basis of handicap? Who grants exception? (II(E)(7))

Source: State Legislative Policies on Private Education, Law and Education Center, Education Commission of the States, 1984. Numbers in parentheses refer to the table designations in the referenced report.
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STATE TABLES

Column Number:	1	2	3	4	5	6	7	8	9	10
Table Number (See Notes)	IID (1)	IID (2)	IIE (2)	IV	IVD (1)	IVD (2)	IVD (4)	IVC	IIE (6)	IIE (7)
ALABAMA	6	140 (a)	(a)	Y (a)	3 (a)	140	Y-L	Y-S	2 (a)	Y-L
ALASKA	4	180+	Y	Y (b)	4	(a)	Y-L	Y-L	2 (b,c, d)	Y
ARKANSAS	5	150	NP	NP	-	-	-	-	NP	Y-L
ARIZONA	(a)	175	Y	Y (c,d e)	NP	NP	N	T-L	NM (e)	Y-L
CALIFORNIA	(b)	NP	Y	Y (a)	3	175	NP	NP	NP	Y-L
COLORADO	NP	172	Y	Y (f)	NP	NP	NP	NP	NP	Yx
CONNECTICUT	4(c)	180	(a)	Y (g)	NP	NP	NP	NP	NP	Y-S
DELAWARE	NP	180	Y	Y (b,f g)	NP	NP	NP	Y-L	NP	Y-L
DISTRICT OF COLUMBIA	NP	NP	(a)	Y (g)	(b)	(b)	Y†	Y	NP	Y-S
FLORIDA	4-5 (d)	180	(a)	Y (a)	NP	NP	NP	NP	NP	Y-L
GEORGIA	NP (e)	180	N (b)	NP	-	-	-	-	NP	Y-L
HAWAII	NP	NP	Y	Y (f)	NP	NP	NP	NP	NP	Y-L (a)
IDAHO	NP	NP	(a)	Y (g)	NP	NP	NP	Y-L	NP	Y-L
ILLINOIS	NP	185	NP (c)	NP	NP	NP	NP	NP	NP	Y-L

STATE TABLES (2)

INDIANA	NP	NP	Y	Y (g)	NP	NP	NP	NP	NP	Y-L
IOWA	NP	24 weeks	(a)	Y (a,g)	(c)	(b)	Y-L	Y-L	NP	Y-L (b)
KANSAS	5-6 (d)	180	NP	NP	-	-	-	-	NP	Y (c)
KENTUCKY	6	185	N (d)	NP	-	-	-	-	NP	Y-S
LOUISIANA	5	180	Y	Y (f)	NP	NP	NP	NP	2.5 (b) 1.5 (c)	Y-L
MAINE	NP	180	Y	Y (b,f g)	NP	NP	NP	NP	N (f)	NP
MARYLAND	3	180 (b)	(a)	Y (g)	NP	NP	NP	NP	NP	Y
MASSACHUSETTS	NP	180	Y	Y (b)	NP	NP	NP	NP	NP	Y-S
MICHIGAN	NP	180 (c)	NP	NP* (a,g)	NP	NP	NP	NP	2.5 (g)	NP
MINNESOTA	NP	175	NP	NP	-	-	-	-	NP	Y-L
MISSISSIPPI	5	155	Y	Y (b)	NP	NP	NP	Y-S	NP	Y-L
MISSOURI	6	NP	(a)	Y (h)	(b)	(b)	NP	NP	NP	Y-L (c)
MONTANA	4-6 (d)	180	Y	Y (b)	NP	NP	NP	Y-L	NM (e)	Y-L (d)
NEBRASKA	NP	175	NP	NP	-	-	-	-	NP	Y-L
NEVADA	NP	180	Y	Y (b,g)	NP	NP	NP	NP	NM (h)	Y-L
NEW HAMPSHIRE	6	180	NP	NP	-	-	-	-	NP	Y-S

STATE TABLES (3)

NEW JERSEY	(a)	(d)	(a)	Y (g)	NP	NP	NP (a)	NP	NP	Y-L
NEW MEXICO	NP	(e)	NP (e)	NP	NP	NP	NP	NP	NP	Y-S
NEW YORK	NP	190+	(a)	Y (g)	(b)	190+	NP	NP	NP	Y-L
NORTH CAROLINA	6 (f)	180	NP	NP	-	-	-	-	NP	Y
NORTH DAKOTA	NP	180	NP	NP	-	-	-	-	NP	Y-S (c)
OHIO	5	182	Y	Y (i)	NP	NP	NP	Y-S †	NP	Y-L
OKLAHOMA	6	180	(a)	Y	(b)	(b)	NP	NP	NP	Y-L
OREGON	(e)	(f)	Y	Y (b)	NP	NP	NP	Y-L	(i)	Y-L (c)
PENNSYLVANIA	5.5	180	Y	Y (a,b)	(b)	(b)	NP	Y-L	2 (j)	Y-L
PUERTO RICO	(e)	(g)	NP	NP	NP	NP	NP	NP	NM (h)	NP
RHODE ISLAND	NP	190 (h)	Y	Y (b)	(d†)	(b†)	NP	Y-L	NP	Y-L
SOUTH CAROLINA	NP	NP	Y	Y (f,g)	NP	NP	NP	NP	NP	Y-L (e)
SOUTH DAKOTA	5.5	175-190	Y	Y	(b)	(b)	NP	Y-L	NP	NP
TENNESSEE	NP	175	NP	NP	-	-	-	-	3 (b,c)	Y
TEXAS	7	165 (i)	NP	NP	-	-	-	-	NP	Y-L (c)
UTAH	NP	9 mo.	Y	Y	NP	NP	NP	NP	2.5 (b)	Y-L

STATE TABLES (4)

VERMONT	(b)	175	Y	Y (f)	NP	NP	NP	Y-S	NP	Yx
VIRGINIA	NP	NP	NP	Y† (g)	(b)	(b)	NP	Y-S †	(i)	Y-L (b)
WASHINGTON	(g)	180	NP	NP	-	-	-	-	NP	Y-L
WEST VIRGINIA	NP	180-185	Y	Y (b)	(b)	(b)	Y-L	NP	2 (b,c)	Y-L (c)
WISCONSIN	NP	180	Y	Y (g,h)	NP	NP	NP	NP	NP	N (c)
WYOMING	(a)	175	NP	Y (b,j)	NP	NP	NP	NP	NP	Y-L

NOTES TO STATE TABLES

NP. No provision.
† Implied by statute.
* Based on judicial decision(s).

Column 1:
a. Full time while school is in session.
b. No statewide provision, set by local districts.
c. Hours of "actual school work".
d. Dependent upon grade level.
e. No statutory requirement; state board may set by regulation.
f. Below Grade 4, set by local board.
g. Aggregate hours for school year.

Column 2:
a. Applies only to instruction provided by private tutor.
b. Or 1,080 hours.
c. Each day attendance falls below standard district forfeits 1/180 of per pupil state aid.
d. All days and hours public schools are in session.
e. As set by local board.
f. As set by state board.
g. As set by state board within prescribed limits.
h. "School term" may be longer.

Column 3:
a. Not applicable. Codified within basic requirements.
b. But state law invalidated on basis of vagueness.
c. But court decisions appear to permit.
d. Exceptions made on per pupil basis.
e. Definition excludes instruction by parent, guardian or person with custody of child.

Column 4:
a. Instruction must be provided by certified tutor.
b. Subject to approval by local district.
c. Instruction must be provided by person who has passed basic proficiency tests.
d. Pupil must take nationally standardized achievement tests.
e. Test scores must be filed with local district.
f. Subject to approval by state board.
g. Instruction must be equivalent to that provided in public schools.
h. Program must be approved by "court of competant jurisdiction".
i. Instructor and program subject to state approval.
j. Limited to cases of inability to attend school arising out of physical condition.

NOTES TO STATE TABLES (2)

Column 5:
- a. Between specified hours of the day.
- b. Equivalent or substantially equivalent to those established for the public schools.
- c. Local board may require attendance for entire time school is in session.

Column 6:
- a. "Full time".
- b. Equivalent or substantially equivalent to that of public schools.

Column 7:
- Y-L. Yes, by local authorities.
- Y-S. Yes, by state authorities.
- Y. Yes, authority not specified.
- a. State sets standard; not specified how reviewed.

Column 8:
- Y-L. Yes, by local authorities.
- Y-S. Yes, by state authorities.
- T-L. Yes, through test scores provided local authorities.
- T-S. Yes, through test scores provided state authorities.

Column 9:
- NM. No mileage specified.
- a. Walking distance.
- b. Distance from school.
- c. Distance from transportation.
- d. Includes distance from alternative authorized school (private or governmental).
- e. Discretionary with local authorities.
- f. May attend school in nearest adjacent district or state.
- g. Under specified age.
- h. Discretionary with state authorities.
- i. Mileage varies with age.
- j. If no free transportation provided.

Column 10:
- Y-L. Approval granted by local authorities.
- Y-S. Approval granted by state authorities.
- Y. Statute not specific as to approval authority.
- N. Statute does not provide for exemption.
- x No approval required.
- a. Also exempted if alternative education provided.
- b. Determination made by court.
- c. Child must receive special education.
- d. Child may be provided with alternative education.
- e. Only if no special classes available within district.

TABLE -F-

IF HOME INSTRUCTION BY A TUTOR IS PERMITTED, MUST THE TUTOR BE A CERTIFIED TEACHER TO SATISFY REQUIREMENTS IN THE COMPULSORY EDUCATION LAW?
(Note that an answer of "not applicable" means that home instruction is not expressly mentioned in state statutes.)

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ALABAMA
Yes. The certificate is "issued by the state superintendent of education . . . ." Ala. Code sec. 16-28-5 (1975).

ALASKA
Yes. The tutor must be certified under state law. Alaska Stat. sec. 14.030.010(b)(1)(B) (1982).

AMERICAN SAMOA
Not applicable.

ARKANSAS
Not applicable.

ARIZONA
A child may be "instructed at home by a person passing the reading, grammar and mathematics proficiency examination . . . in the subjects given in the common schools of this state . . . ." Ariz. Rev. Stat. Ann. sec. 15-802(B)(1) (Supp. 1982).

CALIFORNIA
Yes.
"The tutor or other person shall hold a valid state credential for the grade taught."
Cal. Educ. Code sec. 48224 (West 1978).

COLORADO
Yes. The compulsory attendance law exempts children who are instructed "at home by a teacher certified . . . or under an established system of home study approved by

the state board." Colo. Rev. Stat. sec. 22-33-104(2)(i) (1973).

CONNECTICUT
No provision.

DELAWARE
No provision.

DISTRICT OF COLUMBIA
No provision.

FLORIDA
Yes. Home instruction must be by a tutor meeting state criteria. Fla. Stat. Ann. sec. 232.02(4)(West 1977).

GEORGIA
Not applicable.

GUAM
No provision.

HAWAII
Yes. The child may be excused "where a competent person is employed as a tutor . . . and proper instruction is thereby imparted as approved by the superintendent." Hawaii Rev. Stat. sec. 298-9(2) (1976).

IDAHO
Yes. All school teachers are required to be certified, and no exception is given for teachers in home instruction programs. Idaho Code sec. 33-1201 (1981).

ILLINOIS
No provision.

INDIANA
No provision.

IOWA
Yes. The child must receive "equivalent instruction by a certified teacher . . . ." Iowa Code Ann. sec. 299.1

(West Supp. 1983).

KANSAS
Not applicable.

KENTUCKY
Not applicable.

LOUISIANA
No provision.

MAINE
No provision.

MARYLAND
No provision.

MASSACHUSETTS
No provision.

MICHIGAN
No provision. But see Op. Att'y Gen. No. 5579, Sept. 27, 1979. A parent may not provide for his or her child's education at home without having a certified teacher.

MINNESOTA
Not applicable.

MISSISSIPPI
No. A parent or other person need only "furnish to the superintendent such evidence as may by him be deemed satisfactory that such child will, in fact, receive instruction in the home adequate to provide such child with the basic skills required in the areas of language arts and mathematics." Miss. Code Ann. sec. 37-13-97 (Supp. 1982).

MISSOURI
No provision.

MONTANA

No provision.

NEBRASKA
Not applicable.

NEVADA
No provision.

NEW HAMPSHIRE
Not applicable.

NEW JERSEY
No provision.

NEW MEXICO
No provision.

NEW YORK
No. However, "instruction may be given only by a competant teacher." N.Y. Educ. Law sec. 3204.2 (McKinney 1981).

NORTH CAROLINA
Not applicable.

NORTH DAKOTA
Not applicable.

OHIO
No. However, the child must be taught "by a person qualified to teach the branches in which instruction is required." Ohio Rev. Code Ann. sec. 3321.04(A)(2) (Page 1980).

OKLAHOMA
No provision.

OREGON
No provision.

PENNSYLVANIA
Implied. All properly qualified tutors must be approved

by the district superintendent of schools. Pa. Stat. Ann. tit. 24, sec. 13-1327 (Purdon Supp. 1983).

PUERTO RICO
No provision.

RHODE ISLAND
No provision.

SOUTH CAROLINA
No provision.

SOUTH DAKOTA
No. "Individuals [in alternative home instruction] shall not be required to be certified." S.D. Codified Laws Ann. sec. 13-27-3 (1982).

TENNESSEE
Not applicable.

TEXAS
Not applicable.

UTAH
No provision.

VERMONT
No provision.

VIRGINIA
Implied. The child must be taught by a "tutor . . . of qualifications prescribed by the Board of Education and approved by the division superintendent." Va. Code sec. 22.1-254 (1980). In Grigg v. Commonwealth, 297 S.E.2d 799 (1982), home instruction by an unapproved tutor did not qualify as an exemption to the compulsory education law.

VIRGIN ISLANDS
No provision.

WASHINGTON

Not applicable.

WEST VIRGINIA
No. However, home instruction must be given by people who are qualified to give "instruction in subjects required to be taught in the free elementary schools of the State." W. Va. Code sec. 18-8-1 (Supp. 1983).

WISCONSIN
No provision.

WYOMING
Not applicable